MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

SUBMISSION FROM CARE

Introduction

CARE is a Christian charity which provides resources and helps to bring Christian insight and experience to matters of public policy. CARE has been working to influence the Scottish Parliament on matters relating to education, marriage, family life, sexual health and bioethics since 1999. We have about 3000 supporters in Scotland which are drawn from all the major Christian denominations. We welcome the opportunity to submit written evidence to the Equal Opportunities Committee and would be pleased to give oral evidence.

Question 4 – How would you characterise your views on the Bill in general?

The Bill is unnecessary and a distraction from matters which are of importance to the general population. All the legal rights of marriage are already available to same-sex couples through civil partnerships. There is no great demand for the same-sex marriage and the other measures contained in the Bill. The disproportionate impact of the Bill in terms of potential infringement of civil liberties (particularly freedom of conscience and freedom of speech) outweighs any benefits which might be accrued by those who wish to see the law changed in the manner proposed. Moreover, the Bill may be in contravention of the European Convention of Human Rights. If this is so, the Bill is in danger of being struck down in the Court of Session.

Question 5 – How would you characterise your views on the introduction of same sex marriage, so that same sex couples can marry each other?

The Nature of Marriage

Marriage is an institution which was ordained by God at the dawn of human history. It is given for the good of individuals and human societies. It benefits humanity in three ways. First marriage provides life-long companionship for adults, within the context of the complementarity and distinctiveness of male and female. Second marriage provides the appropriate context for procreation and the raising of children. Third, marriage is sacred in nature in that it is prophetic of Christ's eternal relationship with the Church and reveals the nature and purpose of God to humanity.

In the Christian tradition, procreation has been viewed as the primary good of marriage since at least the fourth century. The procreative potential of the institution of marriage is intrinsic to its nature and role in society. This is the key factor which gives the state an interest in recognising marriage within the framework of civil law. The introduction of so called 'same-sex marriage' reduces the institution of marriage to a subjective expression of affection between two individuals. Its objective purpose, the procreation of children within a stable and secure environment consisting of the complementarity of male and female parents, is removed.

By redefining marriage in this way, the state assumes a power which is beyond its legitimate authority. The authority to define marriage rests with God alone. In seeking to acquire this power, the state exceeds the bounds of its limited authority. It become tyrannous and government assumes that it has absolute authority over all of human life. However, the Christian understanding is that the civil authorities have a limited mandate to govern under the authority of
Christ. It is this principle which has underpinned the governance of Western societies since the time of Constantine and which is now being placed under threat by legislative measures such as those proposed in this Bill.

The institution of marriage is of fundamental importance of the cohesion and stability of society. The declining rate of marriage and increasing relationship breakdown within the UK has had adverse consequences for society in terms of an increase in dysfunctional families, poverty, welfare dependency, crime, costs of elderly care and housing supply.\(^1\) The negative consequences for society of rejecting the Christian model as a context within which to raise children are only likely to increase by redefining ‘marriage’ in the way proposed in the Bill.

**Equality**

This Bill does not advance equality for those in same-sex relationships as all the legal rights of marriage have already been given to those in same-sex relationships through civil partnerships. Moreover, the Bill proposes to continue to allow same-sex couples the opportunity to register for a civil partnership whilst denying this status to heterosexual couples. CARE is of the view that extending civil partnerships to heterosexual couples would further undermine marriage and, therefore, we do not support this proposal. However, we note that the proposal in the Bill to allow same-sex couples access to a legal status which is not available to heterosexual couples is discriminatory and most likely in breach of Article 14 of the ECHR.

Whilst claiming to be legislating in order to ensure equality, the Bill proposes a two tier system of marriage. For those in a heterosexual marriage the concept of adultery will remain in law as evidence of the grounds for a divorce. For those entering same-sex ‘marriages’, this will not apply. If the Scottish Government is committed to bringing same-sex relationships into the definition of marriage, its failure to draw such relationships into the same legal framework as marriage means that the entire project breaks down. It has not created same-sex marriage. The failure to require same-sex couples to meet the demands of marriage in terms of the same basic faithfulness-adultery obligations is not equality. If the relationship obligations are different then the relationship is different and must logically be categorised differently. We suggest that the status quo whereby marriage is only available to heterosexual couples and same-sex couples can receive legal rights by registering a civil partnership is preferable to the proposals contained in the Bill. This does not detract from the principle of equality.

**Question 12- Would you like to comment on the wider issue of protections for those in society who may have concerns about same-sex marriage?**

**Religious Celebrants, Churches and other Faith-based Organisations**

The Committee will be aware of the duty placed on public authorities by the Equality Act 2010 to counter discrimination, promote equality and foster good relations. We consider that it is important when public bodies seek to do so that they maintain a proportionate approach which recognises not only individual rights, but also the rights of association of religious groups, faith-based welfare providers and charities which have trust deed reflecting a religious ethos. The Equality Act contains exemptions allowing such groups to protect their ethos by restricting services to specific communities. The importance of this principle cannot be underestimated. Otherwise the danger remains that religious communities will come under pressure to secularise their ethos and

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operations. Whilst in some cases it would be appropriate for churches and religious organisations to provide services without regard to the religious affiliation or lifestyle choices of their beneficiaries, there may be occasions when such restrictions are necessary in order to protect the ethos of the organisation or to comply with doctrine. The solemnising of marriages is one such occasion.

An important principle which should be prioritised in assessing how to fulfil the public sector equality duty is that of reasonable accommodation. Public bodies should seek to make reasonable accommodation for religious groups in order to facilitate those organisations to maintain their religious ethos. Sadly this principle has not been implemented to date. For example, in the case of faith-based adoption agencies public bodies should not seek to impose a uniform policy on all adoption agencies. If there is more than one provider of a service in a locality, then it is unnecessary to require all providers to provide the service to all of the community. By seeking to do so, public bodies are not promoting genuine equality and diversity, but rather promoting uniformity and denying the rights of association of religious groups.

We are concerned that churches and other faith groups may come under pressure to marry same-sex couples. There is the danger of churches and/or religious celebrants which refuse to 'marry' same-sex couples being subject to litigation. Although the Scottish Government has given assurances that no religious celebrant or faith group will be forced to marry same-sex couples, ultimately this matter may be decided by the European Court of Human Rights. Although the Court has made it clear that there is currently no automatic right to same-sex marriage throughout the Council of Europe area, if a country makes it available in some contexts it must be made available on an equal basis. Discrimination in the provision of same-sex 'marriage' could be ruled to contravene the Convention. There is no guarantee, therefore, that at some future date the court will not rule that religion and belief celebrants must either solemnise all 'marriages' or cease to marry people altogether. The civil legal aspects of a marriage ceremony remain the same regardless of whether it is conducted within a religious or civil setting. Moreover, the Scottish Government is unclear as to whether the term 'public function' will apply to religious celebrants when solemnising marriages. There is a danger, therefore, that religious celebrants will be considered to be a 'public authority' and, therefore, they could be sued under Article 14 of the Convention or under the Equality Act either for discrimination on grounds of sexual orientation or of sex.

The Scottish Government has negotiated (with the UK Government) some protections in the Equality Act for church trustees who refuse to let premises for the purpose of a same-sex marriage and for chaplains working in the public sector who preach against same-sex marriage. CARE welcomes these protections. However, we remain concerned that churches which do not 'marry' same-sex couples may be targeted by over-zealous officials in public bodies. In particular, we are concerned that the Office of the Scottish Charity Regulator (OSCR) may seek to remove charitable status from, or local authorities and other public bodies may refuse to partner with, churches and other faith groups which are unwilling to marry same-sex couples. For example, a local authority may claim that it would be in breach of the Public Sector Equality Duty if it were to give a grant towards the cost of a community project to, or to enter into a contractual relationship with, a local church if the church concerned is unwilling to marry same-sex couples.

Religious charities which provide welfare services or engage in political lobbying may be subject attempts by OSCR to remove their charitable status. The Scottish Government's view is that as long as a social service is available to all people regardless of their sexuality then there should be
no problem, but whether the Equality Act supports this view is unclear. Despite previous Ministerial assurances regarding the future of the Catholic adoption agencies, OSCR is in the process of removing charitable status from St Margaret's Children and Family Care Society because St Margaret’s gives preference to married couples. That which is politicians currently find unacceptable, may very quickly become normal practice if there are not robust legal protections in place. A court would need to balance freedom of religion against the requirements of the Equality Act and it is to be hoped that the judges would prioritise religious liberty. However, the balance which is struck between competing rights may depend upon the nature of the case and the charity concerned. Over time the view of the courts as to what is a proportionate balance between competing legal rights could change. In the future, a court could determine that equality of opportunity is not promoted by giving charitable status to a church which refuses to marry a same-sex couple. Similarly a court might rule that good relations are not fostered by giving charitable status to religious organisations which are involved in political campaigning in support of marriage or to churches which preach that homosexual behaviour is a sin.

Individuals Working in Public Life

The main concern remains, however, that people who have a conscientious objection and who work throughout the public sector in roles which are not specifically religious may lose their jobs (or be unable to find employment in certain professions) if they refuse to endorse same-sex marriage. For example, the Bill does not protect civil registrars who do not wish to officiate at ‘same-sex marriages’. The Scottish Government claims that as registrars conduct a civil function it is not appropriate to allow them an opt-out on conscience grounds. This position wholly ignores the fact that the Christian faith affects the whole of life and is not limited to activity within church buildings. Christianity is a public faith rather than a purely private matter. It is misleading to suggest that a distinction can be made between the activities of civil registrars and religious celebrants in relation to the civil aspects of marriage. In Scotland, the legal aspects of a marriage ceremony (signing the register) are civil in nature whether they are conducted by a registrar or by a minister of religion. The issues of conscience which apply are the same for both groups. The Abortion Act 1967 allows doctors and other health professionals to have an opt-out if they have a conscientious objection to participating in abortions. The same principle should apply with regard to same-sex ‘marriage’.

In the case of Lillian Ladele, a civil registrar was forced out of her job because she was unwilling to register civil partnerships. This case was taken to an Employment Tribunal which Ms Ladele won. However, her employer appealed and the initial ruling was overturned. In January 2013, the European Court of Human Rights ruled against Ms Ladele. Two of the judges strongly dissented from this judgement arguing that Ms Ladele’s freedom of conscience should be respected. This case highlights that if ‘same-sex marriage’ is introduced, civil registrars may well be subject to disciplinary or legal action if they refuse to solemnise such relationships. Conscientious objection will not be respected unless the Bill contains a specific conscience clause requiring local authorities to do so. In addition, the Bill should include a clause which requires individual civil registrars to opt-in along the lines of that proposed for religion and belief celebrants.

Teachers should not be forced to conduct ‘same-sex marriage’ lessons if they have a conscientious objection to doing so. However, there is a real danger that a teacher who refuses to teach that marriage can be between two people of the same sex will face disciplinary action and
may lose his/her job.\textsuperscript{2} Despite assurances from the Scottish Government that this is not their intention, such a case may need to be referred to the European Court of Human Rights for resolution.

The Scottish Parliament’s Equal Opportunities Committee should ask the Westminster Government to amend the Equality Act 2010 in order to incorporate the principle that an employer must make reasonable accommodation of the manifestation of religious belief by employees. It is essential that this protection is provided. Until a commitment is obtained from the UK Government, the Scottish Parliament should refrain from pursuing the introduction of ‘same-sex marriage’.

Other Concerns

Concerns have been expressed that should so called ‘same-sex marriage’ be introduced it is likely that children will be taught in school sexual health education that marriage can be between two people of the same sex. CARE believes that children should be taught about the benefits of marriage (defined as being between one man and one woman with the intent for life) for society and for families in sexual health and religious and moral education. In relation to these two areas of the curriculum, it is the Scottish Government’s intention to continue to allow parents the right to withdraw their children from classes. However, the strength of this right may be called into question as it is contained only in non-statutory guidance rather then in primary legislation. CARE is of the view that such a right of withdrawal should be given legal weight by an amendment to the Standards in Scotland’s Schools Act 2000 which puts this right on statutory footing.

The parental right of withdrawal is directly proportional to the age of the child and the quality of information provided by the school to parents. It may be difficult, therefore, for a parent to exercise their right of opt-out if the child is of secondary school age and the subject of same-sex relationships is being taught in sexual health education or if they are not consulted by the school (at primary or secondary level) with regard to the timing and content of their child’s sexual health education. Moreover, with regard to other areas of the curriculum, the Scottish Government has no intention to allow parents the right of opt-out for their children if the subject of same-sex marriage is discussed. For example, in Modern Studies, History and English it is possible that ‘same-sex marriage’ may be discussed. Indeed it is likely that attempts will be made to mainstream ‘same-sex marriage’ by groups such as Stonewall in the guise of tackling alleged homophobic bullying by seeking to have it discussed across the curriculum. A range of books which discuss same-sex relationships is being promoted by Stonewall for use at the early stages of primary school. If ‘same-sex marriage’ is legalised, schools will come under huge pressure to use these resources. Even denominational schools may not be exempt from such pressures as only the ‘faith aspects’ of the curriculum require approval by the Scottish Catholic Education Service.

The ideology which lies behind the promotion of Stonewall’s resources in schools is fundamentally contrary to a Christian understanding of human sexuality. Included in this ideology is the view that the heterosexual norm in society is responsible for ‘homophobia’ and that gender is a subjective construct. It is argued that in order to combat ‘homophobia’, it is necessary to eliminate the heterosexual norm within the public consciousness, legislation and policy making.\textsuperscript{3} Moreover, the complementarity of male and female is denied and it is claimed that there are more than two

\textsuperscript{3} See the reference to heterosexism on Wikipedia for more information on this ideology.
genders. Education is at the forefront of this battle. It is unclear the extent to which parents will have the right to opt-out their children from lessons which are based on this ideology. Yet failure to allow parents to opt their children out of lessons which the advance this ideology is likely to contravene Article 2 for the First Protocol of the ECHR which states:

“the State shall respect the right of parents to ensure that … education and teaching is in conformity with their own religious and philosophical convictions.”

Clearly the teaching and promotion of same-sex marriage will conflict directly with the religious and philosophical convictions of many parents. It contradicts the rights of Christians and others to have their children educated in accordance with their religious and philosophical beliefs. Same-sex marriage is not only a civil matter; it impinges directly upon the religious beliefs of many parents and the wider population. Parents have the right to withdraw their children from religious observance, as well as from sex education. Many parents have deeply held views about their children being taught about same-sex marriage in the classroom. The law should not undermine these views, but rather it should protect parents’ right to withdraw their children. Parents should have a legal right also to know what will be taught to their children in sexual health or sex education and when such lessons will occur.

Concerns remain that those who disagree with same-sex marriage will be excluded from fostering or adopting children. Although the Scottish Government has promised guidelines in this area, these may not be sufficient to prevent those who have a religious faith being excluded as foster or adoptive parents. The legislation should include a clause which says that views on the nature of marriage cannot be taken into consideration during the process of approving prospective foster or adoptive parents.

The Lord Advocate’s new prosecutorial guidelines with regard to hate crimes are inadequate. Although expressing opposition to same-sex marriage would not be the sole grounds for prosecution, it may be a factor used to justify the prosecution of street preachers, football fans and, should and incitement to homophobic hatred offence be introduced at a later date, academics, ministers of religion or those in churches who record sermons for distribution via the internet or other means. As such, it represents a significant threat to freedom of speech and religious liberty.

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23 August 2013