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

The Christian Institute is opposed to the Bill in principle, including the introduction of same-sex marriage (qu. 5) and issues relating to civil partnerships (qu. 8 and 10). Marriage has served Scotland well for centuries. The potential consequences of redefining it surely warrant greater consideration by the Scottish Government, and require far more significant protection than is currently proposed in this Bill.

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

Redefining marriage for the whole of society
Protecting marriage has always been vital to Christians given its important place in the Bible and Christian theology. It is natural, therefore, that Christians will want to oppose any redefinition of marriage such as that contained in this Bill. Across the world and throughout history, marriage, the union of a man and a woman, has been the bedrock of society and enabled communities to prosper. Marriage benefits society as a whole. Abandoning the true meaning of marriage will have damaging consequences for generations to come.

Marriage was not created by government, and it is wrong for government to redefine it. If politicians are considering redefining something as fundamental as marriage, the public must be given an opportunity to vote directly on the matter. The question of redefining marriage should be the subject of a referendum, as also advocated by the Roman Catholic Church and former SNP leader Gordon Wilson.¹

Procreation
One of the key purposes of marriage is the procreation of children. This is not the only purpose, but it is an important one. If marriage is redefined so that it is detached from this purpose, then marriage can become all about the demands of adults rather than the best interests of children.

Evidence shows that children do best when raised by their married mother and father, but same-sex marriage denies children either a mother or father.² If the Scottish Government is going to base its conclusions on the evidence from social science, it needs to ensure that it has conducted a thorough survey of all the available literature, and we do not believe this is the case. The Scottish Government therefore risks taking a decision based on an incomplete understanding of the issues involved.

¹ The Scotsman, 12 October 2011
Polygamy
Once marriage becomes detached from nature and becomes all about the rights of adults, then what assurance can there be that it will not be redefined further? If marriage can be defined by a Parliamentary vote, then there is nothing to say that the redefinition will stop at removing the requirement for it to be between a man and a woman. In Canada and in some US states where marriage has been redefined, attempts have been made to legalise polygamy.³ In Brazil and the Netherlands, three-way relationships have been given marriage-like recognition.⁴

Liberty of conscience
Christians tell us they simply do not find Government promises to protect their religious liberty believable. Disagreement is not hatred, but if same-sex marriage is legalised those who disagree with it will be labelled as intolerant – particularly in the public sector. This issue is addressed in more detail in question 13.

6. How would you characterise your views on putting belief celebrants on the same footing as religious celebrants?

The key concern is to ensure that sham and forced marriages are guarded against so that the integrity of marriage ceremonies in Scotland is preserved. It will be crucial that those holding frivolous ‘belief systems’ (e.g. Jedi) are not permitted to solemnise marriages

7. How would you characterise your views on the arrangements for authorising celebrants to solemnise opposite sex and same sex marriage (including the opt-in procedures)?

We do not support any proposals to redefine marriage. The question of religious bodies or celebrants being required to solemnise same-sex marriage would therefore not arise.

If same-sex marriage was to be introduced, it should be self-evident that no religious body or celebrant should be required to solemnise such ‘marriages’. In any civilised and democratic society, religious bodies and individuals cannot be required to act against their religious beliefs.

The Scottish Government would have to ensure first that amendments are made to the Equality Act 2010 and other statutes to guarantee robust protections for religious freedom. A gay couple in England claim to have already launched a legal action to challenge the Westminster Government’s ‘quadlocks’ which are designed to prevent

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³ PinkNews.co.uk, 4 February 2009, see http://www.pinknews.co.uk/2009/02/04/mormon-accused-of-polygamy-to-use-gay-marriage-as-defence/ as at 22 August 2013
⁴ The Daily Telegraph, 28 August 2012; The Brussels Journal, 26 September 2005, see http://www.brusselsjournal.com/node/301 as at 22 August 2013 – This was an example of a cohabitation agreement [Government of the Netherlands, Marriage, Registered Partnership and Cohabitation Agreements, see http://tinyurl.com/bdykz59]
churches from being forced to conduct same-sex weddings. Should a case be brought against the Scottish Government’s opt-in system, as we believe is inevitable, it could well end up at Strasbourg. Given the Court’s evolving case law, the safeguards for celebrants and religious organisations could well prove worthless.

It will be essential that religious organisations and celebrants are given clear guidance on the operation of whatever system is introduced, including a thorough briefing on the safeguards.

8. How would you characterise your views on civil partnerships changing to marriage?

As our response to question 4 says, we do not support the redefinition of marriage to allow same-sex couples to get married. The question of a same-sex couple seeking to change their civil partnership to a marriage would therefore not arise.

9. How would you characterise your views on allowing civil marriage ceremonies to take place anywhere, other than religious premises, agreed between the couple and registrar?

No comment.

10. How would you characterise your views on allowing the religious and belief registration of civil partnerships?

**Threat to religious liberty**

By changing the law to allow civil partnerships to be registered through religious ceremonies the Scottish Government would be opening up religious groups and individuals to the possibility of legal action. There are extremely complex issues surrounding both the organisation of religious groups and the ownership of religious premises. We do not believe that any scheme can adequately account for this reality.

There are two main areas of concern in response to any scheme:

- can it prevent litigation against religious celebrants or groups who don’t agree with civil partnerships, and
- can it prevent religious celebrants who do agree with civil partnerships going ahead in defiance of their religious group?

The Scottish Government has acknowledged that ensuring that religious bodies and religious celebrants do not have to carry out civil partnerships against their will “may

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require an amendment of the Equality Act 2010, which is generally reserved”. Religious civil partnerships must not be introduced unless the Scottish Government can guarantee religious freedom. It clearly cannot make this guarantee if, on its own admission, some of the necessary legislative changes are outside its powers.

Little demand for the change

As well as the threat to religious liberty, we question the demand for this change. There were only 554 civil partnerships registered in Scotland in 2011, and only 3,861 between the introduction of civil partnerships in 2005 and 2011. The number of religious civil partnership ceremonies each year is likely to be very small. The risk to religious liberty posed by introducing religious civil partnership ceremonies greatly outweighs this small demand.

The secular nature of civil partnerships

By their very nature, civil partnerships were always intended to be a civil, not a religious matter.

The civil partnership scheme was designed and introduced on the basis that it would be “purely secular”. The then UK Government gave repeated assurances on this point during the passage of the Civil Partnership Act in 2004. Permitting civil partnerships to be registered through religious ceremonies is a radical departure from this clear undertaking, and represents a fundamental change in the nature of civil partnerships.

The Scottish Government admitted in its own consultation paper that “the proposed religious registration service outlined here would be very similar to a religious service for the solemnisation of marriage”. Here we see a clear statement of the blurring effect that would be caused by introducing religious civil partnerships.

Religious blessings for civil partnerships are already possible

Same-sex couples wishing to have a religious blessing prior to or after their civil partnership registration are entitled to do so. This separation of the religious element from the registration is entirely appropriate given the secular nature of civil partnerships. It is also entirely consistent with civil marriage registration.

11. How would you characterise your views on allowing transgender persons to stay married when obtaining a full Gender Recognition Certificate, which provides legal recognition in the acquired gender?

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6 The Registration of Civil Partnerships – Same Sex Marriage: A Consultation, The Scottish Government, September 2011, para. 2.35
8 House of Lords, Hansard, 12 May 2004, col. 139GC; House of Commons, Hansard, Public Bill Committee, 21 October 2004, col. 101
9 The Registration of Civil Partnerships – Same Sex Marriage: A Consultation, The Scottish Government, September 2011, para. 2.25
No comment.

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

Although Section 14 of the Bill attempts to address protections for freedom of expression, it remains narrow in its focus and fails to fulfil the Scottish Government’s promise that the “legislation will be accompanied by important protections for freedom of speech”.10

- A key area of concern relates to the multiple implications of redefining marriage in the sphere of education. Some teachers will inevitably be asked their personal views about same-sex marriage. They should be protected from being forced to actively endorse it, and protected when expressing any deeply-felt objections they may have. Under proposals for England and Wales, the UK Government said that “no teacher is under any obligation to endorse a particular view of marriage… Teachers are and will continue to be free to express their personal views or those of their faith about marriage or any other matter, provided they do so in a balanced and sensitive way”.11 But already here in Scotland, a secondary school teacher was required by his school to teach a relationships course promoting same-sex marriage “without exemptions or safeguards” in a way which he could not in good conscience do.12 The Government should also make positive steps to protect, and not undermine, the rights of parents who may wish to withdraw their children from any lesson that includes teaching about same-sex marriage.

- Our legal system’s well-established provision for conscientious objection should be applied to registrars who may wish to object to solemnising same-sex marriages. Article 9 of the European Convention on Human Rights makes it clear that religious freedom includes freedom of conscience and the right to manifest beliefs. In a recent case against the UK in the European Court of Human Rights involving a registrar who was forced out of her job for refusing to conduct same-sex civil partnerships, dissenting judges asserted that the State is obliged to respect an individual’s freedom of conscience by taking measures to protect the right of the conscientious objector. According to the judges, such a right is one of the most fundamental rights inherent in the human person.13 Although the registrar did not succeed in her claim, this was down to the majority of judges holding that the actions of the UK were within the margin of appreciation afforded to member states.

- The Scottish Government must broaden its understanding of religious freedom and recognise that religious liberty means more than freedom to believe things

10 Scottish Government Press Release, Same sex marriage to be legalised, 25 July 2012
11 House of Lords, Hansard, 19 June 2013, col. 351
12 Memoranda submitted by Samuel Webster (MB 97) and Ralph Manning (MB 122), House of Commons, Public Bill Committee on the Marriage (Same Sex Couples) Bill, Session 2012-13
13 Eweida & Others v. The United Kingdom [2013] ECHR 37 (15 January 2013), see Joint Partly Dissenting Opinion of Judges Vucinic and De Gaetano
inside your church and inside your head, but living and working in line with those beliefs in everyday life.

- The Public Sector Equality Duty (PSED) in section 149 of the Equality Act 2010 places public authorities under a duty to have regard to the need to “eliminate discrimination”, “advance equality of opportunity” and “foster good relations”, including the need to “tackle prejudice”. The effect of this sweeping Duty could mean that actions of public bodies undermine the robustness of protections provided in the Bill.

- Chaplains work in a variety of spheres in the public sector, often on a voluntary basis. Volunteers would have no statutory employment rights, so it is imperative that serious thought is given to such situations.

- We welcome the Scottish Government’s readiness to look at changing current fostering guidance “to make it clear that a would-be fosterer should not be rejected just because of his or her views on same sex marriage”.14 A case in Derby saw a Christian couple unable to become foster carers apparently on the basis of their religious views on homosexuality. The High Court ruled that in placing children with foster carers who object to homosexuality and same-sex relationships “there may well be a conflict with the local authority’s duty to ‘safeguard and promote the welfare’ of looked-after children”.15 Aidan O’Neill QC has affirmed that there “is no doubt that similar considerations would apply in Scotland” and is of the view that it would be lawful for a local authority to refuse a couple’s application to be foster carers on this basis.16

- The Policy Memorandum states that: “Many people and organisations hold the view that marriage can only ever be between a man and a woman. The Government has made clear its respect for this view…” [para. 97]. It is crucial that this notion is enshrined on the face of the Bill.

13. Would you like to comment on the wider issue of freedom of speech?

The potential impact of the redefinition of marriage on religious individuals can be seen from the cases that have arisen since civil partnerships were introduced. Registrars who were not willing to conduct civil partnership registrations have been forced out of their jobs. Expressing a view in a private capacity that civil partnerships in churches would be “an equality too far” has led to the demotion of an employee.17 Guesthouse

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14 Policy Memorandum to the Marriage and Civil Partnership (Scotland) Bill, 27 June 2013, page 22
15 BBC News Online, 28 February 2011, see http://www.bbc.co.uk/news/uk-england-derbyshire-12598896 as at 22 August 2013
16 Re: The Implications for Freedom of Conscience and Religious Liberty Arising from Redefining Marriage in Scotland – Advice, Aidan O’Neill QC, June 2012, para. 11
17 The Times, 17 November 2012. Although Mr Smith won his case for breach of contract, he did not regain his previous job.
owners in both Cornwall and Berkshire have been fined for upholding a married-couples-only policy for double rooms.\(^{18}\)

When Rev Brian Ross expressed his traditional view of marriage on his personal blog, this was deemed to be incompatible with his position as a chaplain to Strathclyde Police.\(^{19}\) Gordon Wilson was removed from his role with Dundee Citizens Advice Bureau, because of his views on marriage.\(^{20}\) Scottish Borders Council deputy leader, Catriona Bhatia, has made it clear that the traditional view of marriage should not be introduced by school chaplains.\(^{21}\) Shortly after homosexual adoption was legalised there were calls to close religious adoption agencies which disagreed. There have been other similar examples.

The sheer quantity of these cases, even before marriage has been redefined, surely warrants greater consideration by the Scottish Government, and requires far more significant protection than is currently proposed. Especially in light of the frequent, categorical statements Alex Salmond made just last summer about protecting freedom of speech and religion, such as to “entrench” and “make sure” the rights of “freedom of speech, the freedom of articulating, the freedom of practice and process of religion” are “inviolate, as they should be”.\(^{22}\)

14. Would you like to comment on any other wider issues in relation to the Bill that are not mentioned above?

The Scottish Government has announced plans to review the Civil Partnership Act 2004 to “consider the position on opposite sex civil partnership”. Proposals to extend civil partnerships to heterosexual couples would only serve to undermine the institution of marriage. It would introduce a marriage-lite alternative for opposite-sex couples by enshrining in law the possibility of obtaining all of the rights and privileges of marriage without the responsibilities.

The Westminster pensions minister said that in England, allowing heterosexuals to have a civil partnership instead of a marriage would cost the country up to £4 billion in public service pension rights alone.

The Scottish Government’s review of civil partnerships should also include consideration of the case for extending civil partnerships to house-sharing family members or those in a non-commercial relationship of care where the carer lives with the person being cared for.

23 August 2013


\(^{19}\) The Scotsman, 1 March 2013

\(^{20}\) The Scotsman, 29 October 2011

\(^{21}\) Southern Reporter, 16 March 2013

\(^{22}\) Alex Salmond, First Minister, speaking at a Scottish Cabinet public meeting in Renfrew, 23 August 2012, see [http://soundcloud.com/scotgov/the-scottish-cabinet-in](http://soundcloud.com/scotgov/the-scottish-cabinet-in) as at 11 October 2012