MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL
SUBMISSION FROM LGBT LABOUR SCOTLAND

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

In support

LGBT Labour Scotland strongly supports and welcomes the bill. We believe the legislation will be a huge step forward for equality in Scotland, and that it provides a balance between equality and freedoms of religion and speech. We believe it is the right time to introduce full marriage equality. It is a debate that is being had across the world and has the overwhelming support of the LGBT community and widespread support amongst the public. When this bill does pass, it will mean another major step towards equality for everyone regardless of your sexual preference. We do believe that some parts of the bill could still be improved further - we outline these in the responses to questions 7, 8 and 11 below.

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

In support

LGBT Labour Scotland believes that the introduction of same sex marriage in Scotland sends the message to all that we live in a modern and inclusive Scotland. It is vital that the bill does not create two different versions of marriage, same-sex marriage and mixed-sex marriage, because that would lead to continued discrimination. The law should treat all marriages the same, regardless of the genders of the spouses. We believe the bill achieves that, with the exceptions of the arrangements to allow religious and belief bodies to choose to conduct mixed-sex marriages only, and the outdated rule of law that in a mixed-sex marriage the wife cannot be charged with resetting goods stolen by her husband. The treatment of those issues in the bill is correct. The bill applies the existing meaning of adultery as evidence for divorce, to same-sex and mixed-sex marriages. Under the existing law, sexual intercourse with a person of the opposite sex is adultery; other forms of sexual infidelity, with a person of the same sex (or opposite sex), can instead form the basis of a divorce under the “unreasonable behaviour” rule. We agree with the approach taken which applies the law on adultery and other sexual infidelity equally to same-sex and mixed-sex marriages, and allows divorce on grounds of sexual infidelity for all marriages. As there is no consummation requirement for marriage in Scotland there is no need for the bill to address this for same-sex marriage.

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

In support
LGBT Labour Scotland welcomes that the bill clarifies that belief celebrants will be on equal footing with religious celebrants and that other organisations similar to the Humanist Society can also apply to conduct marriages.

**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)?**

In support

LGBT Labour Scotland believes that the bill upholds freedom of religion and that this should be applied to both groups of celebrants and that religious and belief organisations should be free to decide whether to perform only mixed-sex marriages, or same-sex marriages as well. We believe it is fundamental to liberty that churches should make their own decisions. That of course includes the right of those churches/faiths (such as the Unitarians, Quakers and Liberal Judaism) that wish to undertake same-sex marriage to be able to do so. We think that the opt-in procedures in the bill are the best way to do this and with the amendments to the Equality Act 2010, which have been agreed with the UK Government, protect the religious freedom of religious bodies and of their members who participate in marriage ceremonies. We also believe that there should be an amendment to the bill, to allow religious and belief bodies that want to, to use the gender-neutral form of marriage ceremony for mixed-sex couples who would prefer that. Some religious organisations will want to use the gender-specific terms husband and wife for all their marriages, and they should be free to do so. And those terms should continue to be available for couples that want to use them. We strongly believe that this is particularly important for mixed-sex couples where one or both is transgender or intersex.

**How would you characterise your views on civil partnerships changing to marriages?**

In support

We are fully supportive of the bill’s proposal to allow couples in civil partnerships to convert their partnership into a marriage and research from the Equality Network shows that most couples in civil partnerships would want to convert to a marriage by means of a hassle-free administrative procedure. However, we note with concern that only couples whose civil partnership was registered in Scotland will be able to convert their partnership into a marriage will be able to do so in the manner outlined above. Couples who had their ceremony registered in another country and who have subsequently moved to Scotland will in effect have to dissolve their civil partnership in order to convert it to marriage. In order for a civil partnership to be dissolved, the couple would have to prove that the partnership is beyond repair by living apart for one year. If the couple returns to the country where they registered their partnership, if that country does not recognise same-sex marriage, they will still have to dissolve their partnership. LGBT Labour Scotland believes this is deeply unfair and recommends that all couples in civil partnerships be allowed to convert to a marriage by the same procedure.
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?

In support

We welcome this proposal.

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

In support

Although we imagine most of our members would prefer a civil marriage, religious marriage or civil partnership, we welcome the option of religious and belief registrations of civil partnerships being there for those who wish to take advantage of it. This option may be of benefit to same-sex couples with religious beliefs who would rather have a civil partnership rather than a marriage and churches who are not happy about performing same-sex marriage but would be comfortable with religious and belief registrations of civil partnerships.

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?

In support

LGBT Labour Scotland strongly supports allowing transgender people who are married to obtain gender recognition without being required by the state to divorce. However we believe that there are amendments needed to the parts of the bill that deal with gender recognition. At the moment, unamended, the bill will allow a married person to require the consent of their spouse to obtain gender recognition. This enables the spouse to effectively veto the trans person’s gender recognition, or at least to delay it while the trans person applies for a divorce. The spousal consent provision in the Marriage (Same Sex Couples) Act generated a great deal of criticism from trans people during the passage of the Act at Westminster and has led to many trans people feeling deeply unhappy about the legislation as enacted. We therefore strongly believe that spousal consent should not be required for the granting of gender recognition, but should instead be required for the subsequent re-registration of the marriage and the issue of a new marriage certificate. As at present, the non-trans spouse would continue to be able to obtain a divorce in such circumstances, if they wished to end the marriage. We think that the bill is also currently missing a provision that was added to the corresponding legislation at Westminster, allowing a person to obtain gender recognition with simpler evidence requirements if they have been transitioned for at least six years. LGBT Labour Scotland understands that when a person has been transitioned for a long time, it can be very difficult to obtain all the medical evidence as they may no longer be in contact with their medical team. We believe that a provision for simpler medical evidence for long-term transitioned people should be added to the bill; this would assist the Gender Recognition Panel as well as applicants. We would also
like to see the minimum age for applying for gender recognition brought into line with the minimum age for marrying in Scotland to 16.

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

LGBT Labour Scotland believes the bill makes a good balance between giving equal rights to the LGBT community and those who are not members of the LGBT community. However, we note with concern certain proposals to allow registrars to be able to opt out of performing a same-sex marriage on account of the celebrant’s own personal religious beliefs. We are firmly opposed to such an idea. When conducting a ceremony, registrars are acting on behalf of the state, not a religious organisation, and we would therefore expect them to perform a same-sex marriage if it is legal in the eyes of the state to do so. Allowing registrars to opt out of performing same-sex marriages because of their own prejudices sets a very dangerous precedent. It could lead to practitioners in the public service, e.g. doctors, nurses, etc. picking and choosing whom they want to treat on the basis of their own personal religious beliefs and LGBT Labour Scotland believes that this would send a perverse message that service provision for LGBT people should fall outside of these parameters. The present system which does not give registrars an opt-out for civil partnerships, works well and we see no reason why this should be any different for performing same-sex marriages. There have also been calls for teachers to be able to opt-out of discussing same-sex marriage and for parents to be able to withdraw their children from lessons discussing it. We are firmly opposed to this proposal as it is very much akin to reintroducing Section 2A of the Local Government (Scotland) Act of 1986 which the Scottish Parliament repealed in 2000. Pupils should be prepared for the world they live in. Same-sex marriages will be part of that and the chances are they will encounter them during their lives. As part of a comprehensive education that should be aware that such marriages exist on an equitable basis as others. The focus of teachers should be holistic education of the children in their charge, not their own views. We note that opt-outs are not available where other issues contentious for some people, such as divorce, are discussed.

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

We believe that the bill will have no negative effect on freedom of speech, as section 14 of the bill outlines. People will remain free to disagree with same-sex marriage and to express that disagreement publicly. The Lord Advocate’s guidance published with the bill clarifies that it is not a crime to disagree publicly with same-sex marriage. The case of Smith v. Trafford Housing Trust has also clearly demonstrated that it is against the law for an employer to take action against an employee simply because they say publicly that they disagree with same-sex marriage.

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

We strongly believe that the bill is a huge step forward for equality, but recognise that it does not introduce full equal marriage. The main thing missing from the bill is the introduction of mixed-sex civil partnerships. We believe that the same choices; marriage or civil partnership, should be open to all couples regardless of their
gender. Many people in our modern society are uncomfortable with some of the connotations of marriage; it seems only fair that people are given the choice. We seek to move towards a society whereby institutions are not available based on who you love; but open to all. Everyone in the country should be able to decide whether they wish to marry or instead to enter into a civil partnership. We therefore welcome the Scottish Government’s public commitment to conduct a review of civil partnership law and we believe that the review should start without delay, and once it is complete, there should be legislation brought forward to open up civil partnership in Scotland to couples regardless of their gender. This will also make it possible for a person in a civil partnership to get gender recognition without the need to change their civil partnership to a marriage. Finally, we understand that the regulation of private sector pension schemes is reserved to Westminster, and that under the current rules, private sector pension schemes will be allowed to pay much smaller survivor’s pensions to people in same-sex marriages than to those in mixed-sex marriages. LGBT Labour Scotland strongly feels that this is clear discrimination, and the UK Government has agreed to set up a review of the situation, to report by July 2014. The UK Government has the power to change the rules on this by statutory instrument, and we strongly believe that they should do that once the review is complete.

Are you responding as...

an LGBT group

LGBT Labour Scotland
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