NUS Scotland welcomes the publication of the Marriage and Civil Partnership (Scotland) Bill. We believe that extending the right to marry to same sex couples is an important step forward for LGBT equality. Since the introduction of civil partnerships, there has been a welcome growth in acceptance by society of LGBT communities and of the need for LGBT equality. We believe that the introduction of same-sex marriage is an important step for LGBT communities in being fully accepted and having the freedom of choice.

For many LGBT people of faith, same-sex marriage ceremonies would allow them to bring their faith in to their relationship more fully and we believe this is an important step forward in the acceptance of LGBT communities within faith communities.

We are therefore very supportive of the overall principles of the Bill. We do, however, oppose the continued ban on mixed sex civil partnerships. We have outlined some further comments on this and other aspects of the detail of the Bill below.

**Opting out of solemnising same-sex marriage**

NUS Scotland believes that religious and belief bodies, and their celebrants, should have the option to opt in to solemnise same sex marriage. We believe the Scottish Government’s proposals will allow LGBT people of faith to get married, while at the same time protecting and extending religious freedom by providing the option of solemnising same-sex marriages to religious and belief groups. However, we would ask religious organisations who do not opt-in to performing same-sex marriages to reflect upon the effect that this may have on members of their faith who also are part of LGBT communities.

We welcome the fact that civil registrars will not be given an opt-out of solemnising same-sex marriage in this Bill as published, as we opposed any such opt out during the consultation on this issue. Civil registrars act as agents of the government, and cannot let religious or moral objections determine whether or not they will perform marriage, same-sex or otherwise. The act of solemnising should be determined by the rule of law, not the personal views of the registrar.

**Same-sex marriage in education**

NUS Scotland raised concerns in response to the earlier consultation on this issue in relation to any changes to education legislation. We believe that education should be inclusive of all learners at all levels, regardless of their sexual orientation, gender identity, or family situation, and taught in a way that is free from prejudice or discrimination. All of our schools will have LGBT pupils and pupils from LGBT families and education should be about promoting equality and mutual respect amongst all pupils.
We therefore welcome the fact that the Scottish Government has agreed that this is no need to make changes to Education (Scotland) Act 1980 in relation to same-sex marriage.

We believe strongly that an open and inclusive education is vital to make all pupils feel welcome and to tackle homophobic and bi-phobic bullying in our schools. NUS Scotland believes the primary education level discussion of same-sex marriage should form part of an appropriate and broader conversation about varied family structures. As children and young people progress in education and take sex education, this education should always be inclusive of LGBT issues, including same-sex marriage.

Converting civil partnerships to marriage

NUS Scotland also raised concerns at the consultation stage that couples in civil partnerships which wished to convert to marriage may be required to have a marriage ceremony in order to do so. We felt that this could be costly, may remove significance and meaning from the civil partnership ceremony already held, and may be a barrier to couples wishing to convert.

We therefore welcome the fact that the Bill as published will now make arrangements for an administrative route for couples to make this change.

Continued ban on mixed-sex civil partnerships

NUS Scotland believes the Bill should end the ban on mixed-sex civil partnerships. Allowing civil partnerships among mixed-sex couples is vital to ensure equality and freedom of choice for those who do not wish to marry.

Maintaining the ban on mixed-sex civil partnerships will also mean that same-sex couples in civil partnerships will be compelled to convert this partnership to a marriage in the event that one of them obtains a gender recognition certificate that would make them legally a mixed sex couple.

NUS Scotland believes that no couple should be compelled to convert to being married unless they wish to, and that it should be for each couple to decide for themselves.

Gender recognition

NUS Scotland supports the Scottish Government’s aim to revise the gender recognition process to ensure individuals who are married or in a civil partnership can gain gender recognition without need to divorce or dissolve their civil partnership. We also believe that these couples should not lose benefits or rights earned while married or in a civil partnership in obtaining gender recognition.
However we do have concerns about the process for obtaining gender recognition, in particular in relation to spousal consent, long term transitioned people, and the age for gender recognition.

**Spousal consent**

The requirement to have spousal consent to obtain gender recognition has been described as a ‘spousal veto’ as it effectively allows for the spouse of a trans person to prevent them from obtaining gender recognition, unless they are able to obtain a divorce. In circumstances where the spouse is unwilling to co-operate, they may prevent the trans person from obtaining recognition for their gender for many years.

We believe that the rights of both individuals in a marriage or civil partnership need to be balanced and we would support the suggestions put forward by Scottish trans on how this could be achieved in the legislation. In particular, we believe it is important to ensure that a spouse cannot block a trans person from obtaining gender recognition, but that they remain able to withhold consent for the re-registration of their marriage or civil partnership.

**Long term transitioned people**

We would also support the suggestion from Scottish trans in relation to long term transitioned people and the gender recognition process. We believe that the administrative or logistical issues associated with the process should not prevent individuals from obtaining gender recognition. Long term transitioned people may find it difficult to obtain the evidence required by the current process. Previously a temporary arrangement was available for long-term transitioned people to obtain recognition with different evidence.

**Lowering the age for gender recognition**

NUS Scotland would support lowering the age for gender recognition from 18 to 16, the age at which people in Scotland can marry (without parental permission). Current provisions would mean that where one person in a couple is a 16 or 17 year-old trans person, who has not received recognition for their gender, the couple would be discriminated against compared to other couples, where gender recognition was possible due to their age. For example, a couple who are legally the same sex, but would be mixed sex if gender recognition were available for one partner, would be prevented from marrying in a church which does not conduct same sex marriages.

It is also unfair for young people who have been living as their acquired gender for over the 2 years required by the Gender Recognition Act by the age of 16 to be required to wait for two years to gain recognition for their gender, and for the ability to marry or enter into a civil partnership in accordance with their gender identity. These young people may also be facing discrimination as a result of the sex on their birth certificate not being reflective of their gender.
Gender-neutral ceremonies

NUS Scotland believes that provision should be made in the Bill for gender neutral marriage ceremonies, to ensure couples do not have terms imposed upon them in a marriage ceremony which do not reflect their identity. Currently, ceremonies for legally mixed sex couples require a declaration that the parties are ‘husband and wife’ but legally mixed sex ceremonies are gender neutral.

In circumstances where a person’s overseas gender recognition is not recognised, a ceremony may be treated as mixed sex, and therefore use terminology which is inappropriate. At the same time, individuals who do not live as either a man or a woman, they should not be forced to be called a husband or a wife against their wishes.

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