Equal Opportunities Committee

5th Report, 2013 (Session 4)

Stage 1 report on the Marriage and Civil Partnership (Scotland) Bill

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Equal Opportunities Committee
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Equal Opportunities Committee

Remit and membership

Remit:

1. The remit of the Equal Opportunities Committee is to consider and report on matters relating to equal opportunities and upon the observance of equal opportunities within the Parliament.

2. In these Rules, “equal opportunities” includes the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds or on grounds of disability, age, sexual orientation, language or social origin or of other personal attributes, including beliefs or opinions such as religious beliefs or political opinions.”

*(Standing Orders of the Scottish Parliament, Rule 6.9)*

Membership:

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Marco Biagi (from 18 September 2012) (Deputy Convener from 8 November 2012)
Mary Fee (Convener) (until 4 September 2013)
John Finnie
Annabel Goldie (from 16 November 2011 until 16 January 2013)
Alex Johnstone (from 17 January 2013)
John Mason (from 30 October 2012)
Margaret McCulloch (Convener) (from 5 September 2013)
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Clerk
Douglas Thornton

Assistant Clerk
Ailsa Burn-Murdoch
Equal Opportunities Committee

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The Committee reports to the Parliament as follows—

SUMMARY OF CONCLUSIONS

Marriage: meaning and purpose

We note the differing views expressed in evidence on the meaning and purpose of marriage.

(Paragraphs 1 to 121)

Protections and freedom of expression

We note stakeholders' varying views on the approach taken in the Marriage and Civil Partnership (Scotland) Bill ("the Bill") towards protecting celebrants of faith and religious organisations’ freedom to conduct legally valid marriages in keeping with their doctrines. We ask the Scottish Government to consider those views in its approach to the amending stages of the Bill.

(Paragraphs 122 to 206)

Registration of celebrants

We note the explanation in the Scottish Government’s Policy Memorandum as to why the Bill maintains two categories of ceremony rather than adding ‘belief’ ceremonies as a separate category. However, we also note the point raised by the Scottish Council of Jewish Communities – supporting the change aiming to designate, for example, Humanist marriages as other than ‘religious’, but disagreeing with the approach taken of designating them and religious marriages together as ‘religious or belief marriage’ rather than as ‘religious marriage or belief marriage’ – and seek the Scottish Government’s view on the suggested amendment to the redefinition of non-civil marriages, to more prominently reflect the distinction between religious ceremonies and belief ceremonies.
We seek the Scottish Government’s view on the opinion expressed by the Humanist Society Scotland that the treatment in marriage law of the Church of Scotland affords it a privileged status.

(Paragraphs 207 to 213)

**Civil partnerships**

We note that the Scottish Government plans to consider issues relating to reform of civil partnerships, including opposite-sex civil partnerships, in its forthcoming review.

We note that the Bill creates a requirement that those same-sex couples who have entered into a civil partnership in another country must dissolve their partnership before being permitted to marry in Scotland. We believe that if same-sex marriage is introduced, these couples should have similar access to the proposed administrative procedure for conversion of civil partnership to marriage as couples whose civil partnerships were conducted in Scotland.

(Paragraphs 214 to 247)

**Change of gender of married persons or civil partners**

We note the Scottish Government’s position that it has struck the right balance regarding gender-neutral ceremonies, and that allowing such ceremonies could cause problems for denominations that might not want to use a gender-neutral marriage declaration when marrying an opposite-sex couple. However, we believe that it should be possible to allow a choice of gender-neutral or gender-specific language for marriage declarations and call on the Scottish Government to reconsider its position.

We note evidence calling for the requirement for spousal consent to be removed from the gender recognition process. We accept the Scottish Government’s view that, whilst the non-transitioning spouse has at least two years to take action, it may be the application to the panel that makes a non-transitioning spouse consider his or her options. We realise that spouses of people seeking gender recognition may find themselves in circumstances that are very difficult to face and that we have not received evidence from their perspective. However, we believe that the non-transitioning spouse’s personal choice is sufficiently protected by the automatic grounds for divorce triggered by his or her partner’s seeking gender recognition. We therefore believe the requirement for spousal consent for gender recognition is unnecessary and should be removed.

We draw two further conclusions regarding gender recognition issues raised in evidence, whilst recognising that it may not be possible to deal with them effectively within the scope of the Bill—

- Regarding the difficulties facing long-term transitioned people, we welcome the Scottish Government’s willingness to consult relevant stakeholders further with a view to lodging an amendment at Stage 2.
• We note the representations made to us about lowering the age requirement. We do not consider that we have received sufficiently comprehensive evidence in this area and ask the Scottish Government to provide, in advance of Stage 2, a detailed response on the issue.

(Paragraphs 248 to 281)

Impact on other areas of life

We draw the Parliament’s attention to the views expressed as regards the relationship between the Bill and public services, including educational matters.

(Paragraphs 282 to 334)

Delegated powers

We note and support the recommendations put forward by the Delegated Powers and Law Reform Committee, and ask that the Scottish Government provide a response in relation to the recommendations and any relevant amendments lodged should the Bill progress.

(Paragraphs 335 to 348)

General principles

We have considered the general principles in the context of opinions expressed in written and oral evidence to us. We recognise the validity of perspectives on all sides of this issue and draw the Parliament’s attention to the depth, range and sincerity of the views submitted to us. We recommend to members of the Parliament to approach the Stage 1 decision with the same dignified tenor as our evidence sessions and with due respect for a diversity of views.

The majority of the Committee supports the general principles of the Bill and recommends that Parliament approves the Marriage and Civil Partnership (Scotland) Bill at Stage 1. A minority of the committee does not support the Bill because they disagree in principle or because they are not convinced that adequate protections are in place. We wholeheartedly support the right of individual members to decide on the Bill as a matter of conscience.

(Paragraphs 349 to 351)
MARRIAGE REFORM

1. The Marriage and Civil Partnership (Scotland) Bill (“the Bill”), introduced in the Parliament on 26 June 2013, covers the following key matters relating to marriage law—

- the introduction of same-sex marriage
- putting belief celebrants on the same footing as religious celebrants
- the arrangements for authorising celebrants to solemnise opposite-sex and same-sex marriage
- civil partnerships changing to marriage
- the authorisation of Church of Scotland deacons to solemnise opposite-sex marriage
- allowing civil marriage ceremonies in any place agreed between the couple and the registrar, other than religious premises

Scottish Government consultations

2. Before introducing the Bill, the Scottish Government issued two consultations: between September and December 2011, The Registration of Civil Partnerships Same Sex Marriage – A Consultation and, between December 2012 and March 2013, The Marriage and Civil Partnership (Scotland) Bill – A Consultation. Analyses of the respective consultations were published in July 2012 and June 2013. Subsequently, in October 2013, it transpired that 4,110 electronic responses to the second consultation, collected by Scotland for Marriage, were not successfully transmitted to the Scottish Government. We are satisfied with the Government’s position on including the responses concerned, which is that it will—

- consider any additional points made in those responses which were not made in responses sent before the closing date for the consultation
- put information on its website about this consideration

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• reach a view about whether any amendments at Stages 2 or 3 might be desirable and whether, therefore, the Government should lodge amendments to the Bill

Parliamentary scrutiny

3. When the Bill was introduced, we issued an open call for written evidence. On 2 July 2013, the Finance Committee also called for written evidence, on the Bill’s Financial Memorandum, and published the responses\(^7\). By 23 August 2013, we received 1,311 written submissions. We held oral evidence sessions in September and October 2013; the extracts from the minutes of those meetings, listing the names of witnesses that gave evidence, are at Annexe A. The official reports of those meetings, together with associated written submissions, are at Annexe B and all other written submissions, as published, are at Annexe C. The Delegated Powers and Law Reform Committee’s report to us on the delegated powers provisions in the Bill, published on 2 October 2013, is at Annexe D.

MARRIAGE: MEANING AND PURPOSE

4. In this section of the report, we review, in the context of the reforms proposed by the Bill, evidence submitted to us on how marriage is viewed: for example, how it is looked on in faith groups, what it represents to LGBT people and, more generally, what social attitudes are on the matter.

Significance of gender

Complementarity and procreation

5. Currently, only couples formed of one man and one woman may enter into a legally valid marriage. The Bill would enable same-sex couples also to do so.

6. Some evidence to us described a concept of ‘complementarity’ between men and women in the context of marriage. For example, the Catholic Parliamentary Office on behalf of Bishops’ Conference of Scotland wrote—

“The complementarity of male and female, and their unique role in the transmission of life, underscores the reality of marriage as a natural social environment for the birth and growth of every person.”\(^8\)

7. John Deighan, Catholic Parliamentary Office, described that complementarity as the “inherent essence” of and “rational basis” for marriage—

“There are lots of friendships and they should always be valued … but why does the state take an interest in a particular relationship between a man and a woman? Fundamentally, we believe that it is because of the procreative capacity of that relationship. That is the only relationship out of which a child can come into the world. We want to ensure that that child is in the right environment. As the United Nations Convention on the Rights of the Child recognises, the priority should always be that the child is brought up with the

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\(^8\) ‘Bishops’ Conference of Scotland. Written submission.
parents, which is what marriage does—it keeps the parents together for the sake of the child.” 9

8. He conceded, however, that procreative capacity should not be a criterion for entering into a marriage—

“Saying that marriage is the environment in which procreation takes place is not the same as saying that we have marriage for only that reason. Typically and traditionally throughout society, we have recognised three ends of marriage: first, that it is built on love, the couple definitely love each other and it is for the mutual comfort of the couple, as they are attracted to each other; secondly, that they have the capacity to have children; and, thirdly, that the common good of society is aided by having that stable foundation for family life. Those are the three ends of marriage.

“Sometimes, those three ends do not always attain. For example, there are some people who just cannot have children. As a society we put a lot of effort into trying to help those people—we have adoption services and there is even quite an emphasis just now on fertility services—so we try to ensure that that environment is adequately understood and protected. We are not saying that anyone who cannot have children is not capable of entering marriage, but that is the archetypal model of what a marriage is.” 10

9. Asked whether they would marry people whom they knew to be infertile, 11 the Rev David Robertson from the Free Church of Scotland, the Rt Rev Dr John Armes from the Scottish Episcopal Church and the Rev Dr Alan Hamilton from the Church of Scotland answered that they would. The Rev David Robertson said—

“Yes—I would have no problem in doing that, although I am not sure how I would know whether they were infertile.” 12

10. The Rev Dr Alan Hamilton said—

“I am not aware that that issue has ever been debated by the General Assembly of the Church of Scotland, but I am struggling to see why ministers would not do so—if they were told, which is fairly unlikely.” 13

11. On the same point, Ephraim Borowski, Scottish Council of Jewish Communities, said—

“Like the Rev Dr Hamilton, I am not aware that anyone has raised the question or has any concerns about the matter.” 14

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12. In relation to Catholic Parliamentary Office’s view on the purpose of marriage – namely, to create an environment to ensure that children had parents – John Deighan was asked whether, for him, “parents” meant one man and one woman and could not involve any other combination.\textsuperscript{15} He replied—

“Biologically, we know that parents are a mother and a father. Yes, that is what parents are.”\textsuperscript{16}

13. He went on to draw a distinction between the child-centred view of marriage and what he described as a view that marriage was “just a loving relationship between any two people” who had committed themselves to each other, characterising the contrast as “a fundamental philosophical clash of opinions”.\textsuperscript{17} He stated—

“… the traditional view … is upheld by the Catholic Church, most of Christianity throughout time and most of western civilisation, that marriage centres around the fact that we create an environment to ensure that children have parents. That is the fundamental difference, and our grave concern is that, if we change the law as proposed, we will obscure that particular understanding.”\textsuperscript{18}

14. He added that the Bill would not “satisfy” everyone—

“There was talk earlier that the bill gives everyone the right option, but it does not. The issue is about how all of society, and not just religions, understand marriage. Is marriage about protecting children and ensuring that their parents are bound together so that they are there to bring up the children, or is it just a relationship that is a form of friendship? We believe that it is the former. We think that, for the common good of society, and particularly for children, we need to state that as a society and to protect it. That is about to be lost.”\textsuperscript{19}

15. Scotland for Marriage’s representative, Dr Gordon Macdonald, also spoke of a complementarity between men and women in marriage—

“The question that you have to ask yourselves is: what is marriage? Is marriage just a subjective expression of love between two individuals or is it more than that—does it have some sort of objective reality? In particular, what is the state’s interest in legislating for marriage? Throughout history and across societies, the state’s interest in legislating for marriage has arisen

because marriage is the context in which children are normally produced and reared, and it is the most stable and secure context. The sociological data show that children perform better if they come from a family with married parents than if they come from a single-parent family or some other sort of broken home. That being the case, I think that the state has an objective interest in recognising marriage in law.\textsuperscript{20}

16. He argued that the state had “never been interested” in whether a man and a woman getting married loved each other; for him, the state’s interest was in whether they were “committed to staying together” and would “provide a framework” in which children would be raised—

“In history, there have been many society marriages that were not love marriages. That does not happen as much any more, but it used to happen. There has been a historical development in that sense.

“The point that I am making is that the state’s interest relates purely to the production of children and the raising of the next generation, in the interests of the security and stability of society. That is why the biological complementarity of male and female is crucial to the essence of what marriage is.”\textsuperscript{21}

17. The Rev David Robertson (Free Church of Scotland) also emphasised procreation in terms of the meaning of marriage, in what he described as “basically the catholic Christian orthodox position”.\textsuperscript{22} Notwithstanding his earlier answer that he would marry an infertile couple,\textsuperscript{23} he said—

“The meaning of marriage is straightforward. It is the union between one man and one woman, for the threefold purpose of mutual companionship, the procreation and upbringing of children in a secure environment, and the good of society.”\textsuperscript{24}

18. The Rt Rev Dr John Armes (Scottish Episcopal Church) drew the following from the Episcopal Church’s canon 31—

“Marriage is a physical, spiritual and mystical union of one man and one woman created by their mutual consent of heart, mind and will thereto, and is a holy and lifelong estate instituted of God.”\textsuperscript{25}

19. He said that the challenge currently faced in the Episcopal Church is whether to rethink that definition—

“If that is to change, we will have to undergo quite a long process of conversation, discussion and decision before we can accept that any of our ministers can preside at a marriage of two people of the same gender.”  

20. The Rev Dr Alan Hamilton (Church of Scotland) added—

“There are undoubtedly theological nuances in relation to expressions of understanding of marriage across churches and religious traditions, but the issue for us here is whether or not marriage is only between one man and one woman. It is certainly the historical catholic—with a small c—Christian tradition that it is.”

21. He described the prospect of changing that as “an immense ask”, although he acknowledged that, under the Bill, the churches would be offered the possibility to change, rather than asked to do so.

22. Dr Salah Beltagui (Muslim Council of Scotland) added that marriage was “not just for the procreation of children” but also “for the growing up of the children in the family”. Drawing a link with society as a whole, he said—

“There are also the wider relationships of kinship within the family and extended family. If we lose that, we lose a lot of the cohesion of society. In relations based on the family, the children are the focus of those relations not only at the time when they are children; even when they grow up, there is still that relation between the children and their parents and grandparents. That is what holds society together, and it is important to keep that.”

23. He also felt that allowing same-sex couples to marry would take away the delineation of family roles—

“In our tradition, there are things—they are also mentioned in the bill—such as certain relations not being allowed to marry because they are so close in kinship. If we start changing the definition of marriage from what we know and what we know about who is coming from which line and who is not, there will be confusion and we will not know exactly where we stop and where we start. It will be very difficult to find out who is related to whom in those terms. Having a kinship relationship does not stop at only the father and mother—it

is much wider than that—and not only for the time but also for the future of the family.”

24. Dr Beltagui foresaw potential consequences of allowing same-sex marriage—

“What scares people are the things that will happen under the bill that are not expected. The bill gives a list of people whose relationships are too close for them to marry. For us, that list includes same-sex couples. It will be dangerous for society if we keep changing the list to exclude relationships that we currently recognise as making it not possible for people to marry. As people have said, that could lead to incest and other dangerous relations. That is one thing.

“Another thing is that the definition of adultery in the bill is confusing because the Government went back to the definition of adultery between a man and a woman. The bill makes marriage acceptable between two men or two women, but it uses the definition of adultery only between a man and a woman. That means that someone can have relations with someone of the same sex outside a same-sex marriage, including in a threesome, a foursome or whatever. Because the bill goes down a new road, diverging from the main traditional, historical way of marriage, it is creating situations that we do not know the end of, and we must be careful about these things.”

25. John Deighan summed up the perspective that gender is significant to the meaning of marriage—

“The proposals … are that man and woman do not matter—they are to be completely interchangeable. We do not think that reason supports that position.”

Complementarity: other views

26. John Phillips, representing the Religious Society of Friends (Quakers), gave a different point of view—

“For us, the crucial thing is the complementarity between two individuals who are making a committed relationship with each other and need the support of their community and of God, helping them through their lives. The complementarity is not to do with gender; it is to do with the particular relationship that two individuals work out between themselves, for the benefit not only of themselves but of the community in general.”

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27. Asked whether he agreed that there was a “complementarity of male and female”, the Equality Network’s Tim Hopkins said—

“Gender is not that simple. We know, for example, that there are transgender people, people who are born into a male body but grow up to discover that they are female, people who are intersex, who do not have a male or a female body but have a mixture of those two things, and people whose self-perceived gender identity is neither male nor female or is a mixture of those two things. The reality is that things are not as simple as people just being male or female.”

28. James Morton (Scottish Transgender Alliance) added a further dimension affecting intersex people—

“…people whose bodies are at variance with what is clearly male or female have contacted us and said that they and their partners are under massive amounts of stress as they are worried that, while same-sex marriage does not exist, their relationships might be challenged. Somebody might say, “Well, your body is not clearly male, therefore your marriage—in which you are the husband and you have a wife—is not legal because you should not be counted as male.” That causes a massive amount of distress. In addition to the detrimental discrimination faced by transgender people and their spouses under the current separate systems, there is also intense worry and distress for intersex people and their partners.”

29. Tim Hopkins acknowledged that “most marriages” and, indeed, “many same-sex couples” had children. However, he also pointed out that current marriage law did not require a marrying couple to be capable of having children and offered a different reading of the purpose of marriage—

“Our view is that the bill is about love—and marriage is about love. I think if you ask most married couples what their marriage is about they will say that it is about love, a commitment to each other and, if they have children, their family. All those things apply to same-sex couples, as well.”

30. The Rev David Coleman (United Reformed Church) expressed a view along similar lines—

“From our conversations over the past couple of years, the United Reformed Church synod of Scotland can have no objection to same-sex marriage on the basis that it will not result in the conception of children. We are of the view—I think that this is a general consensus—that the nature of marriage is primarily the fellowship of the couple and that children are an additional blessing to that. Speaking as a parent, my nurture of my children was not
exhausted by my donating one cell. The nurture of children goes on throughout people’s lives. Marriage can add to the stability of society by providing a place for that.”

31. Asked whether marriage has a role in broader society as a basis for family, rearing children and providing social stability, the Rev David Coleman replied—

“When we have had discussions in the synod of Scotland, we have started by trying to come to a mind, as far as possible, on what people who have different positions regard as essential to marriage—commitment, respect and equality. It is likely that people who have differing opinions would say that marriage itself is beneficial to and a stabilising factor in society. The discussion has been on how we define marriage rather than on whether it is a good thing. The committee was very much of a mind that the introduction of same-sex marriage will have no impact whatever on opposite-sex marriage.”

32. The Rt Rev Dr John Armes (Scottish Episcopal Church) said—

“Although some people in our church take the very conservative line that marriage is between a man and a woman, others see marriage as a covenanted relationship of love. In that sense, the issue is about love, not equality, and those people would see the opportunity for people of whatever gender to form an alliance in marriage as strengthening marriage itself. I would not want people to gain the impression from this conversation that everyone in our church is of the same mind on the matter.”

33. Responding to the same question, Ross Wright from the Humanist Society Scotland said—

“I find puzzling the suggestion that opponents of the bill make in relation to children and stability, particularly because—whether you like it or not—same-sex couples have children, by adoption, surrogacy or whatever. Logically, if someone believes that marriage is good for children, it must follow that they should support marriage for same-sex couples with children. It is incoherent to argue both ways. Our point of view is that, if children deserve the protection of marriage, all children deserve that protection.”


34. He went on to argue that the purpose of marriage was much simpler than many of the views advanced in evidence—

“... it is extremely important to realise that the majority of marriages in Scotland are not religious, and it has been that way for some time. Although the religious perspective is worth while for those who have a religious faith, part of the reason for my being here is to argue for those millions of people who do not share a religious faith, but share the legal definition of marriage as a private contract between two individuals. We can dress it up with as much philosophy as we like, but that is the legal definition of a marriage.”

35. Ross Wright also argued that the purpose of marriage need not be fixed—

“A final point on the concept of marriage is that the view that most religions currently purport is a current view of marriage. As members will be aware, marriage has in the past been about owning children and women, denying rights and stigmatisation through illegitimacy, all of which have now fundamentally changed. We need to recognise that the bill proposes just another small change to marriage. Those who do not hold a religious view should be allowed to do this.”

36. Arguing that equality was “not really about numbers”, he developed this point further—

“Even if 90 per cent of people are against a piece of legislation, if it benefits some people and does not cause demonstrable harm to others, it should be passed. The problem with rehearsing all these arguments again and again is that the opponents have not put forward a shred of evidence to show how such a measure could cause demonstrable harm or even how it has caused demonstrable harm in the countries where it has been implemented.”

37. Louise Cameron, representing the Scottish Youth Parliament, also gave an interpretation of the meaning of marriage that was not rooted in having and bringing up children—

“To the Scottish Youth Parliament, same-sex relationships are just as important as mixed-sex relationships. We will not discriminate against people because of their sexual orientation. We believe that everyone should have the right to get married. Whether they are in a mixed-sex relationship or a same-sex relationship, they should have the same right.”

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38. Asked specifically whether having children was a central purpose of marriage, she replied—

“No.”

39. Mark Bevan (Amnesty International) said that Amnesty did not have a position regarding the purpose of marriage and children—

“Our position is based fundamentally on the current inequality. The Parliament has the opportunity to introduce legislation that addresses an inequality, or it can decide not to do so. It can decide to lean towards the European mainstream on human rights, or not.”

40. He “absolutely” agreed, however, that, on the basis that all types of family deserved equal respect, the type of family involving a man, a woman and no children was a valid marriage.

Scottish Government

41. Referring to the expression “definition of marriage”, used by many submitters of evidence, the Cabinet Secretary was asked whether there was a definition of marriage and, indeed, whether it could be defined. He replied—

“There is clearly a definition in law and there is a definition in each church about the union between a man and a woman and what rights and responsibilities are carried by marriage. The one change that the bill will make is that it will allow marriage to take place between two people of the same sex, whereas under current legislation a marriage in law in Scotland can take place only between one man and one woman.”

Equality and human rights

42. For Colin Macfarlane, Stonewall Scotland, the Bill was “about much more than the complementarity issue.” Returning to Tim Hopkins’ point about same-sex couples with children, he told us that an “increasing number of gay and lesbian people, particularly younger ones,” wanted their family structures to be “described in exactly the same way as everyone else’s are.” He said—

“… the bill is … much more about how gay people are viewed in society and about being equal in the eyes of the law. What the bill does for us is to

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completely underline that. It is a robust, strong bill and it will provide gay people with equality in the eyes of the law.

“When civil partnerships were introduced in 2005, we were very much of the view—and we hoped—that the distinctions between gay people and heterosexual people would be eroded and that the way in which gay people were talked about and viewed in the public sphere would change.

“I am sad to say that our hard evidence shows that that has not been the case. Research that Stonewall Scotland commissioned from YouGov showed that in the past five years 216,000 people have experienced some form of homophobic or transphobic verbal or physical abuse in the workplace, and that 99 per cent of our young people have faced some form of discrimination or experienced some form of homophobic language in their playgrounds—half of those children have been directly bullied for being different or perceived to be gay. In the past year, there has been a 12 per cent increase in lesbian, gay, bisexual and transgender-reported hate crimes.

“What the bill will do is to make gay people equal in the eyes of the law, and until that happens the distinction and the public discourse that I talked about will be at risk of not changing.”

43. Responding to the suggestion that the law already gave equal rights and, therefore, debate about the Bill was really about the word “marriage” rather than legal rights or other legal differences, Colin Macfarlane said—

“At the moment, gay people are not equal in the eyes of the law. They are not equal in law. Until they are afforded the same rights and responsibilities as heterosexual married couples are afforded, and until they are able to marry legally in this country, they will not be equal and the distinction will continue. As I said, that distinction allows, in the public sphere, the kind of discrimination that I described. We are very much of the view that until gay people are seen as equal in the eyes of the law, and society sees them as equal in the eyes of the law, the distinction will continue.”

44. Whilst she felt that being LGBT was viewed as a problem less amongst younger people, Louise Cameron from the Scottish Youth Parliament said—

“Bullying is a big issue—homophobic bullying as well. In our consultation, 71 per cent of respondents thought that there should be more education on the stigma that follows LGBT people. Homophobic bullying is really common in schools, with 69 per cent of people having experienced it.”

45. Picking up the theme of young people and schoolchildren’s views on the issue, Mark Bevan from Amnesty International, pointed to a recent three-country

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survey in Finland, the United Kingdom and France looking at suicide rates among children and young people and at the causes of the higher suicide rates—

“In the UK in particular, young gay people were at a very much higher risk of suicide than many other categories of people. For the Parliament not to pass a bill that would provide such equality would contribute to the existence of a status whereby some people have open to them only the second-class position of civil partnerships as opposed to marriage.”

46. He also responded to the citing of the fact that the Universal Declaration of Human Rights and the European convention on human rights conferred a right to marry in terms of a man and a woman as an argument against same-sex marriage—

“The Universal Declaration of Human Rights and, more pertinently, the International Covenant on Civil and Political Rights, as well as the European convention on human rights, are all written as what are referred to as live instruments. They are not written in a way that is fixed and frozen in time but are designed to be interpreted in the light of contemporary society. To paraphrase the United Nations Human Rights Committee, the concept of family is so varied across cultures that there can be no standard definition. The UN committee goes on to say that, despite all the arguments in relation to marriage, all arguments place an essential value on the principle of non-discrimination at the fore of the discussion about family—all types of family—and relationships.”

47. Describing marriage as being “perceived by many people as the gold standard for relationships,” Tim Hopkins (Equality Network) outlined an expectation that same-sex marriage would have an impact on practical discrimination and issues around status and stigma—

“Respondents have said, for example, that people had said to them, “But it’s not a real marriage, is it?” We have heard of hospitals turning people away as next of kin because the hospital has not understood what civil partnership is. One effect of introducing same-sex marriage will be to make that less likely to happen.”

48. It was put to Tim Hopkins that introducing same-sex marriage would change the legal status, but might not change people’s attitudes, which might continue to be framed in terms of ‘real’ and ‘gay’ marriage. He disagreed—

“I do not think that they will. Marriage is understood widely, and allowing same-sex couples to enter marriage will not only help them to feel better


about themselves, but genuinely reduce the stigma that people feel and the discrimination that they face in society.\footnote{Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 5 September 2013}. Col 1384}

49. John Phillips (Religious Society of Friends (Quakers)) described the introduction of civil partnerships as having been "a significant and important step forward in equality"\footnote{Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 5 September 2013}. Col 1401} but continued—

"It is only through experience that we have learned, and really begun to appreciate, that same-sex couples feel that it makes them different in a way that we are unhappy about. We wish for inclusivity.

"We very much want to opt in to being allowed to conduct same-sex marriages, and we are convinced that when we have done so there will not really be any demand among our congregations for civil partnerships, because we know that marriage is what they have been seeking.\footnote{Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 5 September 2013}. Col 1401}

50. Asked about the impact that the lack of equal civil recognition of same-sex relationships had on people’s ability to enjoy other rights, the Rev David Coleman (United Reformed Church) said—

"We … felt that if something is offered by the state it should be offered to all without exception. If a registrar who is an agent of the state has a conscientious problem, that is the problem of the state and somebody should be found—without hindrance or inconvenience to those who are applying—who can conduct the ceremony that is required.\footnote{Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 12 September 2013}. Col 1474.}

51. Ross Wright (Humanist Society Scotland) also commented—

"Our understanding of the civil partnership is that it was a nod to equality and a step in the right direction. However, it is like Rosa Parks in America being allowed to get on the bus. We see equal civil partnerships—which we would also like to have—and equal marriage as providing the fundamental step of allowing people to choose which seat they take on the bus.\footnote{Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 12 September 2013}. Col 1475.}

52. He went on to recount a situation that he had been placed in when conducting a ceremony—

"There was a marquee and everybody was wearing their finery. It was a beautiful day and everyone was happy, with kids running about mad and the mothers-in-law with their biggest hats on. It was a splendid day that was marred only because, when the bridal party, which was two brides, appeared, I could not say the word that everybody else at the gathering was saying,
which was “marriage” … That was painful for me. However, every person there, including all the in-laws and the out-laws—Auntie Jeannie and all—saw it as a marriage. That is the emotional impact of the bill.”

**Human rights**

53. Amnesty International’s Mark Bevan gave a human rights reading of the proposal—

“The International Covenant on Civil and Political Rights makes it clear that equal marriage should be available to all, so that is a fundamental campaigning issue for us. We also see, from more than a decade of research, how intolerance of LGBT people across the world has led to very significant hate crime. That is as present in Scotland today as it is in far-flung places such as Russia. For example, in Arbroath earlier this week a woman was very badly mistreated in a public park because of her sexuality.”

54. Drawing a contrast with the position in certain other countries – allowing permissive attitudes in relation to hate crime, state executions for sexual behaviour, torture, limitations on demonstrations and movements – he went on to say—

“By comparison, to bring the issue closer to home, when we look at what the Scottish Parliament has done in the past, we see that it has been a Parliament that is founded on equality. However, there is inequality in law in relation to marriage at the moment. If, as successive Parliaments have done, this Parliament wants to take action and to take a lead on promoting equality and universal human rights, this is a bill that needs to be passed. There is a tension in Scotland at the moment for a number of reasons, including because Scotland has taken a strong position in relation to a number of human rights.

“Let me quote what the UN secretary general Ban Ki-moon said earlier this year:

‘To those who are lesbian, gay, bisexual or transgender, let me say: You are not alone. Your struggle for an end to violence and discrimination is a shared struggle. Any attack on you is an attack on the universal values the United Nations … and I call upon all countries … to stand with you’.

“Any such attack is an attack on the Universal Declaration of Human Rights, which is a founding convention that supports a fair and civilised society.”

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55. Speaking whether all definitions of family relationships should be equally applicable, Mark Bevan said that the Bill challenged a “cultural norm” but that international law steered towards a “progressive view” of what a family relationship should consist of, with equality as the guiding principle—

“Therefore … I would state the obvious, which is that the bill reduces an inequality that currently exists in the context of the forms of family relationships and marriage that are currently taking place in Scotland.”

56. He added, however, that Amnesty International did not take a view on marriage being a preferable status from the point of view of societal cohesion—

“… that is not a human rights issue. However, we take a strong view that, when the forms of marriage that exist are not applied equally, that is contrary to societal cohesion.”

57. Mark Bevan also said—

“The bill provides an opportunity to deliver a more equal society, which—as I have said—successive Parliaments have tried to deliver. An action that a Parliament can take to foster greater tolerance, understanding and respect for other people will create a more equal society. You are quite right—it is not about whether people are homophobic; it is about equality and all people being treated the same.”

Scottish Government
58. The Cabinet Secretary said that the Bill was “essentially about addressing an inequality” for lesbian, gay, bisexual and transgender people—

“It provides the option for same-sex couples to marry and for the registration of religious and belief civil partnerships. It will also impact significantly on transgender people. A couple who are already married will no longer have to divorce, as is current practice, before the transgender person can obtain a full gender recognition certificate.”

59. He said that passing the Bill would be a significant step to reduce inequality, but recognised the challenges for those who considered that marriage should remain a union between one man and one woman—

“We understand the concerns that they have, and that is why we have included in the bill strong protections for religious and belief bodies and celebrants, including an opt-in process for the religious or belief body and the individual celebrant before any solemnisation of a same-sex marriage can take place.”

60. Describing marriage as a “key societal issue,” he added that amendments to the Equality Act 2010 had been agreed with the United Kingdom Government, that the Bill contained a provision on freedom of speech, that the Lord Advocate had already produced prosecution guidance on that matter and that the Cabinet Secretary for Education and Lifelong Learning was seeking views on draft guidance that reaffirmed the rights of parents to opt children out of sexual health education classes.

61. It was put to the Cabinet Secretary that everybody currently had identical rights and, therefore, that the Bill would redefine equality. He disagreed—

“The bill deals specifically with what I would regard as an inequality, which is the right of people of the same sex to marry one another and have that marriage legally recognised in Scotland. That is the inequality that we seek to rectify through the bill.”

62. He said that people who were gay, generally speaking, the same rights as others in most, if not all, respects but that the “one right” that they did not currently have was the right to marry someone else of the same sex—

“The bill will close that gap to ensure that that part of equality is satisfied and that people of the same sex who wish to marry are allowed to do so.”

63. He added—

“The bill will not force anybody to do anything. All that it will do will be to give people more freedoms. It will give people of the same sex who wish to marry the freedom in law to marry.”

Social attitudes

Civil partnerships

64. Asked how attitudes towards civil partnerships had changed since being introduced, Tim Hopkins (Equality Network) said that, when civil partnerships were being proposed, the Equality Network had said that they were the “right measure...
to introduce” and would be “of huge benefit to same-sex couples” because they would allow them a legally recognised and protected relationship for the first time. However, he continued—

“… we also said that it was not equality—that it would be a separate but equal system—and that, in the medium term, the only thing that would be true equality would be to open up marriage to same-sex couples and to open up civil partnerships to mixed-sex couples, because the two are different and the same choices should be available to couples regardless of gender.

“We also said in 2003 that it would take several years for there to be a public discussion with politicians about opening up marriage to same-sex couples. That was 10 years ago. Those several years and more have now passed. There has been wide discussion publicly and within the Parliament about opening up same-sex marriage for four years. That is why we are now in a different situation from 10 years ago. Ten years ago, it was not time for same-sex marriage; now, it is time.”

65. Colin Macfarlane (Stonewall Scotland) took up the same point—

“To go back to the points that I made earlier, the issue is the distinction in how society views gay people. Tim Hopkins is right that, 10 years ago, we thought that civil partnerships would erode some of those distinctions and that the public discourse on how society views gay people would shift and change. However, I go back to the hard evidence that I showed you about 216,000 people having seen homophobic bullying in the workplace. Children in our schools are still suffering some form of homophobic abuse.

“The distinction has not shifted, and gay people have come to the view that, until they are seen as equal in the eyes of the law, which the bill would achieve—it would cement legality in the eyes of the law; it would confer on gay people the same rights and responsibilities that their straight friends and family have—that distinction will not be eroded.”

66. Asked to explain the position that it had not been the right time for same-sex marriage 10 years before, Tim Hopkins said—

“That may relate to the way that we work as an organisation. We try to work in a consensual way, and we try not to work in an embattled way, which would set us up against other organisations. Ten years ago, we recognised that same-sex marriage was quite contentious. In 2002, when we developed the policy, only one country in the world—the Netherlands—had same-sex marriage, and a lot of countries had civil partnership. Now, all the countries surrounding us in western Europe apart from Ireland already have same-sex marriage.
marriage, and the Irish Government is working on it. The whole context has moved on."^{88}

67. He added that public opinion had also moved on—

“Back in 2002, the Scottish social attitudes survey found that 41 per cent of Scots were in favour of same-sex marriage. By 2006, that had risen to 53 per cent. By 2010, it had risen to 61 per cent of Scots in favour of same-sex marriage, with only 19 per cent against. We try to work in a consensual way.”^{89}

68. Further, he pointed to what he described as “quite a long list of legislation that discriminated against gay people and LGBT people and against same-sex couples” when the Parliament was set up 14 years ago—

“For example, there was a different age of consent for sex between men; there was section 28, which needed to be repealed; there was no recognition in law of cohabiting same-sex couples; adoption and fostering were not available to same-sex couples; sex offences law discriminated against same-sex couples; and there was no hate-crime legislation. It was a long list. We have been addressing those issues and, to the credit of the Parliament, it has been dealing with them one by one.”^{90}

69. He described marriage law as the “last one”^{91} of those discriminatory statutes—

“In terms of sexual orientation equality, this is the last big area where the law still discrimimates against LGB people. If the Parliament passes the bill, which we hope it will, it can be very proud of the way in which the situation has been turned around in the past 14 years, and the very substantial discrimination that LGB people felt and faced 14 years ago will finally have been eradicated from the law.”^{92}

70. Professor John Curtice, an expert on research into social and political attitudes and survey research methods, said that, public trust in banks aside, the “principal secular change” over the last 30 years period had been in the area of sexual mores—

“As well as there being changes in attitudes to same-sex relationships, there has undoubtedly been a substantial change in attitudes towards sex outside

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marriage, particularly premarital sex. There have also been changes in attitudes towards abortion.\footnote{Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 19 September 2013}. Col 1515.}

71. He set those changes in the context of a “more general apparent liberalising trend in attitudes towards sexual mores” in British society—

“Not all the changes have gone at the same pace, but they have all been going in the same direction. The change in attitudes that you refer to seems to be part and parcel of a similar liberalising phenomenon whereby society is taking a very different view of these things from what it did a relatively short time ago.”

72. Referring to the parallel that he had drawn\footnote{Written submission} between those changes and the trend towards people attending religious services less often, Professor Curtice was asked whether there had been any research on whether those two aspects were connected, i.e. whether society was becoming more liberal because people were attending church less. He replied—

“... it is perfectly clear that those who regularly attend religious services are more likely to take a conservative view on these subjects. However, it is also clear that that difference has widened.

“Back in the 1980s, for example, the attitudes of secular Scotland/Britain and those of religious Scotland/Britain were rather similar. The liberalisation of attitudes has occurred predominantly at the secular end of Scottish society but, that said, I also point out in my submission that there has been something of a liberalisation of attitudes even among regular worshippers. The decline of religious observance is undoubtedly one of the reasons why our society has become more liberal, but it also seems pretty clear that attendance at religious services and, indeed, religious organisations, many of which would adopt a conservative stance on these issues, seems to help to frame people’s attitudes.

“Of course, the other liberalising thing that is going on is the expansion of university education. I have not made this point in the submission, but it is clear that those with relatively high educational qualifications tend to be more liberal on these subjects than those with no educational qualifications. Therefore, as we become a better educated society, that tends to encourage social liberalism. That is another phenomenon that has tended to push our society in that direction.”

73. He added that, given the very strong relationship between age and attitudes towards same-sex relationships and given that each new generation of adults entering adulthood had been “consistently more liberal” on the matter than its
predecessor, it was a reasonable supposition that public opinion was “probably
going to become more liberal” on the subject—

“Even if one has question marks about how big or firm that majority might be
at the moment, it is probably only going to get bigger and firmer over time.”97

74. Dr Kelly Kollman (University of Glasgow) was asked to add an international
perspective, specifically whether bringing about those changes had been led more
by social movements or more by institutions such as the European Court or
parliaments. She said—

“Social movements have played a very important part in this. Having said
that, when you open marriage to same-sex couples—or even, certainly in the
early years, introduce same-sex unions—it is the case that it brings
Governments a great deal of attention and generally, as I said, it has been
quite positive attention, so it really depends on where you are looking and on
what countries you are looking at.

“In Spain a new Government came in in 2004—it was not expected to win
that election—and the policy change was seen as being very Government
led, although, of course, the LGBT groups were on board. In the Netherlands,
the Labour Party supported that change quite a bit, but, in Germany, the
SPD—the social democratic party there—was much more reticent. The
change there was really led by the minority Green party and it was much
more of a grassroots movement, so the answer is that it depends on the
country.

“However, the debate has always been a very public debate in any country
that has looked at it and therefore there has been a lot of public scrutiny and
a lot of involvement of public groups on both sides. In that respect, I think that
it has been a good debate; it has been aired in most of those countries. Also,
as I said in my submission … it is one of those policy areas in which the
international realm has been very important but it has not really been led by
legal mandates.

“Politics sometimes matters, and what really matters here is the power of
human rights arguments. They get translated in different ways—in the UK we
often talk about equalities, while other countries talk about anti-discrimination
or equal treatment—but ultimately, at this point in history, the power of
human rights arguments is transformative, and much more so than legal
mandates from international courts or EU policy.”98

Liberalisation
75. Asked what motivated liberalisation and whether there was an increased tendency over time for people to go with the flow, Professor Curtice’s response was to point to what public opinion was in the mid-1980s—

“The idea that society has, in some sense, gone with the flow is difficult to believe given the degree to which, little more than 25 years ago, we as a society pretty much unanimously adopted a critical attitude towards same-sex relationships. It looks to me very much as if there has been a genuine, quite dramatic but substantial change in attitudes, which, in a sense, has been a society not going with the flow. Society has reversed itself.”

76. He also made the point that older generations’ views had “certainly” changed over time—

“One suspects that that is, in part, as a result of being influenced by the greater liberal views of, for example, their own children. Equally, it is almost undoubtedly the case that the views of many older people with regard to cohabitation and heterosexual relations outside marriage have changed as a result of the behaviour of their own children.”

77. He said that, as regards liberalisation and sexual mores, it was “not the case” that society had become wholly permissive—

“For the most part, we seem to be in favour of monogamous relationships at any one point in time. It is simply that we have become much more relaxed, first, about whether the relationship takes place within marriage and, secondly, about the genders of the people who are engaged in the activity.”

78. He said that society’s preference for monogamous relationships was “very clear” and expanded on the point—

“A person’s partner and the quality and nature of the relationship are what seem to matter to people now rather than a sense of obligation, let alone some religious teaching. Therefore, cheating on one’s partner is now, if anything, regarded as even less acceptable because we value the quality of the relationship more than we value the formal institutional position.”

79. He also suggested that there was a “certain irony” around the Bill—

“… we talk about enabling people in same-sex relationships to enter an institution that relatively large sections of the heterosexual community no longer get involved in, at a time when society does not think that sexual relationships should necessarily take place within marriage. That is also part of the liberalising trend of the past 25 years.”\(^{105}\)

80. Professor Curtice went on to state that there was insufficient evidence to know whether attitudes within religious organisations and, in particular, within the clergy, were becoming more liberal. He added, however—

“… we do know … that there is a difference between members of different religious denominations or religions. Perhaps contrary to the general impression, the section of Scottish society that seems to be most conservative on this subject is those of a Presbyterian faith—particularly, it seems, those Presbyterians outside the Church of Scotland. The numbers are relatively small, and we therefore have to be careful, but Episcopalians are probably towards the liberal end of the spectrum, with Catholics somewhere in between.”\(^{106}\)

Consultation: a measure of social attitudes?
81. Asked, with reference to the Scottish social attitudes survey showing that most people believe that same-sex marriage should be acceptable, whether there was any quantitative evidence to show that social attitudes supported the perception that marriage should be for the purposes of procreation, John Deighan said—

“The biggest survey and the most profound probing of public opinion was the Government’s consultation on the proposals, to which it received 77,000 responses. That was way greater than any other survey, which would typically involve 1,000 people. The consultation engaged people who really thought about the issue. We are in a live-and-let-live society—I have that approach myself—in which, if people want something, by all means we let them have it as long as it does not impact on the rest of society. Of the 77,000 people in Scotland who responded, 64 per cent said that same-sex marriage should not be approved and that we should not redefine marriage. So there is quantitative evidence on our side.”\(^{107}\)

82. Ross Wright (Humanist Society Scotland), however, commented that a consultation was “not a referendum” and he felt, therefore, that it would be


acceptable for the Bill to go through the parliamentary process despite most consultation responses expressing opposition.  

83. Professor John Curtice was asked which was more accurately representative of public opinion: an open website-published Scottish Government consultation or a properly weighted scientific study such as the social attitudes surveys and reports carried out by the Scottish Centre for Social Research and the National Centre for Social Research. He replied—

“I note the terms of your question, which I suspect that not everybody would agree with. If anybody thinks that the purpose of a consultation is to find out the balance of public opinion, they do not understand that the value of a consultation is to come to some understanding of the arguments that people put forward on both sides, which you might not necessarily get out of a survey, and to uncover possible technical difficulties and objections to the detail of a bill that civil servants or ministerial colleagues might not have understood.”

84. He said that it was “to be regretted” that, with respect to the Scottish Government’s consultation on the Bill, there had been a tendency by protagonists on both sides of the debate to encourage standard replies, which added “no value at all to that kind of exercise”. He said—

“To that extent at least, you should not look to consultations as a way of understanding the balance of public opinion as opposed to understanding the structure of public opinion and possible technical difficulties with any particular form of legislation.”

85. He also made the point that public opinion need not be the only driver in deciding whether to make a proposed reform—

“Although public opinion on the death penalty has begun to change, it has long been in favour of restoring the death penalty. Many a legislator would say, “I can think of an ethical argument why, on this occasion, I’m not going to follow public opinion.” Given that the role of legislators is, other things being equal, to take serious cognisance of public opinion, if you are going to say, “No, we’re not going to follow public opinion in this area” and if you accept my reading of public opinion, you have to come up with ethical arguments as to why following the public view is not necessarily in the public interest.”

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86. Professor Curtice nonetheless pointed to the significance of social attitudes throughout Britain in the context of the enactment of same-sex marriage laws for England and Wales—

“... whereas even in 1999-2000 Scotland remained a more religious society than England and Wales in terms of levels of religious attendance, that is no longer the case ... attitudes in Scotland are now very similar to those south of the border on a whole load of other areas ... On social issues, Scotland, England and Wales now look very similar to each other. That inevitably raises an issue for this institution. Given that England and Wales have legislated first in the area, and given the similarity of outlooks on the two sides of the border, you would have to come up with good reasons for why Scotland should adopt a different perspective.”

Survey techniques
87. Professor Curtice was asked to comment on the notion that people get softened up with certain questions before the big question gets asked and whether how questions were asked made a big difference to the result—

“Any survey researcher will be extremely sensitive to the possibility that the context within which a question is asked and the way in which the question is phrased can affect the response. In my submission, I have tried to be quite open with the committee by indicating how differences in a question’s wording can make a difference. I think that that is absolutely the case.

“Some of the questions that I highlight in the submission are worded better than others, but I know that in the British or Scottish social attitudes surveys we are certainly very careful to avoid creating a context that leads in one direction or another. We might not always succeed, but our wish is to understand public opinion as accurately as possible and not to promote one or other cause. Clearly some of the other questions that I have highlighted have been commissioned by one side or another, and one might feel that as a result they might or might not have got the answers they were looking for.”

88. He said that, in the end, a judgment had to made—

“We do not have a fantastic amount of evidence on this area—it has certainly not been polled intensively, particularly as far as attitudes in Scotland are concerned—but, looking at the variety of question wordings and the evidence across the piece, I think that on the simple question, “Should same-sex marriage happen or not?”, there seems to be a majority in favour, although I have to say that it does not necessarily look overwhelming.

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“Beyond that, if you ask people to choose between same-sex marriage, civil partnerships or doing nothing, it might not be the case that a majority of people would choose the introduction of same-sex marriage as their first choice but, equally, it seems pretty clear from follow-up questions that many of those for whom civil partnerships might be their first preference are not necessarily particularly opposed to the idea of same-sex marriage. That is simply an attempt to come up with a reasonable judgment of where public opinion seems to lie, given the variety of such opinion.”\(^\text{115}\)

### The impact on marriage

89. Evidence to us gave a variety of views on whether the Bill would strengthen marriage, diminish it or do neither.

90. Kieran Turner, representing the Evangelical Alliance Scotland, said—

“I think that the crux of the issue about the principle is what the definition of marriage is and what the function of marriage is. We would broadly say that marriage is about commitment, children and complementarity. From the state’s point of view in particular, marriage is about children, as has already been said. Beyond that, we see marriage as being the foundational structural unit to bring through the next generation. That is where the state’s interest in marriage fundamentally lies.”\(^\text{116}\)

91. He highlighted a submission by the Faculty of Advocates to the Scottish Government’s consultation, which, he said, referred to the importance of defining what we mean by marriage and raised several questions—

“… is marriage intended to be a lifelong relationship? Should it imply the potential for a sexual relationship? Is it intended to be an exclusive relationship between the spouses? I think that we need to think through what we are defining as marriage … In terms of devaluing marriage, our concern is not solely about same-sex couples being allowed to marry. Our concern is about the fundamental foundational understanding of marriage as good for society, particularly in its context of family. As the Faculty of Advocates would say, although it obviously does not take a policy decision on this, if we lose that definition, we are in danger of losing the meaning of marriage and the foundational understanding of what marriage is as a structure for society. That is our concern. We recognise that love and commitment are good things, but that is not really why the state recognises marriage.”\(^\text{117}\)

92. The Rev David Robertson (Free Church of Scotland) commented—

“… the bill will not initiate a major decline in marriage, as there has been a decline in marriage and its value in society for a long time. The bill is just part


of that process, which I would like to be reversed. I believe that it is because the understanding of marriage has become so weak that the bill is taken as a given by so many people, on the ground that it is just about equality ... My fear is that what is happening here is part of a process and that, if the bill is passed, all marriages will become civil partnerships. The bill represents a move away from the Christian teaching of marriage, on which our society has been based for well over 1,000 years.

“Therefore, I appeal to MSPs not to vote for the bill but to think about the enormous social consequences that the proposed change will have. Even though the bill fits in with the zeitgeist and there is enormous pressure to make such a change, MSPs should say no, at least until we have looked at what the consequences will be. The bill will accelerate the decline in marriage, and the social and economic consequences will be phenomenal.”

93. Dr Gordon Macdonald (Scotland for Marriage) said that he believed that the weakening of the status of marriage had weakened family life and that the Bill would weaken marriage further—

“The increase in divorce and cohabitation has almost certainly led to instability in society and in families. The official report into the riots in England mentioned that most of the people who participated came from broken homes. That is a different issue from the issue that the bill is concerned with, but the decline of marriage as a social norm cannot be divorced from a range of social problems that have arisen in our society.”

94. Asked how increasing the number of people who marry each year would cause a decline in marriage, the Rev David Robertson said—

“Because you are redefining marriage for everyone—you are changing what marriage is—so you are turning all marriages into civil partnerships.”

95. The Rev Dr David Easton from the Methodist Church in Britain expressed a different perspective—

“It is interesting that in the whole debate ... phrases such as “undermining marriage” and “strengthening marriage” are thrown around. I wonder how we would know whether marriage is being strengthened, undermined or diminished. We could consider the divorce statistics. The divorce rate has been very high historically partly because legislation has made it possible while we have had marriage only between men and women, although I understand that, recently, the divorce rate has dipped somewhat. Or would we consider another criterion such as the level of domestic abuse? It is difficult. I can see where you are broadly coming from, but how can we

determine whether marriage is being strengthened? What basis would we use to come to any conclusions? I could have cited examples other than those two."^{121}

Scottish Government
96. Asked for a response to the argument that the Bill would weaken or diminish the institution of marriage, the Cabinet Secretary said—

“I have been married for 35 years and, personally, I do not feel that allowing people of the same sex to be married in any way diminishes my marriage, quite frankly. I know that there are some people who feel that, but I think that they tend to think of that more from a religious point of view than necessarily from a legal point of view.”^{122}

97. He pointed out that the Bill would recognise marriage between same-sex couples in law and that it would be “entirely up to individual churches and celebrants” to decide “from a religious point of view” on their approach—

“… obviously that has to be respected. My view is that, in many ways, the bill will actually enhance marriage because the issue of equality that I referred to in my introductory remarks will be satisfied. I think that it is unfair that people who are in love and who are of the same sex and who wish to marry are currently banned from doing so.

“Of course, one reason why institutions such as the Quaker church are in favour of this change in the law is that they believe that same-sex couples should be allowed legally to marry in their church. At the moment, the law bans, for example, the Quaker church from doing what the Quaker church would like to do, which is to administer same-sex marriages.”^{123}

Legitimacy to reform
98. Some evidence to us challenged the Parliament’s authority to reform marriage. For example, John Deighan (Bishops’ Conference of Scotland) said—

“Marriage is a natural institution and has arisen naturally from the first social grouping, which was between a man and a woman who then had children. That is the foundation of society and we believe it important not to mess around with those foundations.

“The state has a role in legislating on the civil effects of marriage but not on its essence. We cannot have laws saying, for example, that people who sell bracelets can call them watches if they do not tell the time. There is an

essence to marriage; a man and a woman lie at the heart of it, and that is the relationship that gives rise to children."\textsuperscript{124}

99. Asked whether he saw no scope for differences of opinion, he responded—

"We are talking about an essence here. The state does not have the right to recreate what is a natural institution; it exists to uphold the common good, not to re-engineer new foundations for what it thinks could be the common good."\textsuperscript{125}

100. He added that he did not believe that the church could redefine marriage either—

"We can all comment on it, discuss it and try to understand it, but marriage is a natural institution that precedes the church as well as any other institution in society."\textsuperscript{126}

101. The Rev David Robertson (Free Church of Scotland) shared that point of view, going as far as to suggest that the Parliament would be acting ultra vires if it passed the Bill—

"... marriage is what marriage is. When David Cameron and others decided to bring in same-sex marriage, they had to redefine marriage for everyone, as Mr Cameron pointed out. I do not think that any Parliament has the right to redefine marriage any more than any Parliament has the right to say that a circle is a square. There are some things that are beyond the capability even of politicians and that is one of them. Marriage cannot be redefined in that way."\textsuperscript{127}

102. He argued that the state had the right to legislate on "any civil contracts"\textsuperscript{128} that it wished—

"My point of dispute is that marriage is not just a civil contract and the state does not have the right to change such an age-old institution. Basically, it will destroy marriage by turning all marriages into civil contracts ... I was intrigued to learn that adultery will not be a ground for divorce in a same-sex marriage and to hear the discussion about children and so on. In the bizarre world in which we live, our Governments are telling us that marriage is to be redefined as genderless or sexless, childless and faithless. That is an absurd

position. The state can decide any civil contracts that it wishes, but I object to its saying, "We're going to make all marriages a civil contract." 129

103. The Rev Dr David Easton (Methodist Church in Britain) took a different view—

“I hear what my friend is saying, that the state does not have a right to determine what society does. We could turn that round and ask whether the church has a right to determine what society does. That is an issue for debate.” 130

104. He highlighted that, over the centuries, there had been a change in understanding—

“... not that long ago, for example, women—and indeed their property—were considered to be the possession of their husbands. We no longer hold to that now and one must assume that over a period of time civil and even religious understandings of marriage might change.” 131

105. He felt that the state had a role in this issue, just as he felt that religious leaders had a role in commenting on matters of public interest 132 and defended the state’s legitimacy to legislate—

“Some of my fellow panellists might not agree with me—I do not know; they will have to speak for themselves—but I believe that the state has the right to express an opinion and pass legislation and indeed has done so through the years. We the electorate might not agree with those decisions and have the right to chuck you out at the next election ... However, it seems to me that as long as you are members of the Scottish Parliament, or indeed any other democratically elected legislative assembly, you have the right to legislate on matters that come within the boundary and scope of your responsibilities. As a representative of the church, I might disagree strongly with you but that does not mean that I think that you do not have the right to legislate on the matter. I think that you do.” 133

Proportionality

106. John Deighan (Bishops’ Conference of Scotland) felt that the Bill would make a disproportionate change—

“Our religious belief disagrees with the state on that, as it may on other grounds, but we believe that our religious belief concurs with natural reason on this, and that marriage is naturally and self-evidently built on the fact that

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men and women have children. We have to balance up conflicting claims. The conflicting claim here is that, for the sake of the possibly one in 10,000 households that wants to have a same-sex marriage, we will change the definition of marriage for everyone in our society. That is the balance, if you think that it is a matter of a balance of principles. Marriage will mean a different thing for all society, including every child and every family. I think that two households out of 1,000 have a same-sex couple in them, and we have been told that it is expected that 5 per cent of same-sex couples will want a marriage. We are talking about one in 10,000 households possibly wanting a same-sex marriage, and the whole of society has to redefine marriage for the sake of that. That is disproportionate as well as wrong in principle.\textsuperscript{134}

107. Ross Wright (Humanist Society Scotland), however, felt differently—

“It is not about numbers; it is about whether the law will benefit some people or be detrimental to anybody. Those questions have been resoundingly sorted out, so we should continue to move on the legislation at the speed that we are going at. Everything has been examined thoroughly and there is no reason not to pass the bill.”\textsuperscript{135}

Pace of reform

108. Some evidence to us criticised the pace of reform. The Rev Dr Alan Hamilton (Church of Scotland), for example, said—

“… the General Assembly of the Church of Scotland has not debated the matter, but … we are moving into uncharted territory. Unless we are saying that marriage between a man and a woman is of no real significance in society and is not that important anyway, to redefine it so significantly without having the debate that we feel should take place, and without carrying out the research that we feel should be done, over a protracted period—after all, the issue is extremely important, and not just theologically, although we would argue that our theology is also our understanding of society—would be to move too far, too fast.”\textsuperscript{136}


109. Whilst he averred that it was “of deep concern to almost everyone in the Church of Scotland that there should be protection for everyone, regardless of sexual orientation ... and that there should also be equality”, he expressed concern that the Bill moved “beyond equality”, given the existence of civil partnership legislation—

“It is a move beyond equality into sameness, which is another issue that concerns us and one that we do not believe has been properly considered.”

110. The Rt Rev Dr John Armes (Scottish Episcopal Church) supported the point about having a more protracted series of discussions on some of the issues.

111. Stating that the issue was “being driven by politics as much as by ethics”, the Rev David Robertson (Free Church of Scotland) said—

“... what you are doing here is following the herd. I have been involved in Scottish politics for 30 years and this issue has been raised only in the past five years. All of a sudden, we find that all the major political parties are saying that they are for equality. Why were they not for equality 15 years ago or 10 years ago? ... there has been a push for the change and that people are rushing into it without thinking it through. We are just trying to encourage people to think it through.

“I also think that politics is involved. There is almost a sense that we need to show that Scotland is a progressive country and we need to be ahead of England or the United Kingdom Government. I feel that the whole thing has been rushed, and that is why we put that statement in our submission.”

112. Dr Kelly Kollman (University of Glasgow) was asked about the pace of policy change other countries that have adopted policies on same-sex unions in recent years – whether there had been enough consultation in different countries and whether the process of bringing the bills to fruition had caused any problems. She said that so many different countries now had same-sex marriage policies that it was difficult to categorise—

“... but generally the countries that introduced those policies earlier probably had more controversy around them. However, in almost all the countries—there may be a few exceptions—it was the case that a majority of the public supported the policy when it happened. These have tended to be very high-

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profile debates and high-profile policy processes. That means that they have gotten a lot of scrutiny in Parliaments and also in the wider public debate.”

113. She said that it was “amazing” to look at the media coverage of, for example, same-sex unions as opposed to anti-discrimination laws that included sexual orientation—

“There were 10 times as many articles on same-sex unions or same-sex marriage as on anti-discrimination laws in some of those countries. Same-sex unions or marriages have a lot of symbolism; they tend to be something that the media covers a lot and therefore they tend to be something that Parliaments scrutinise a lot.”

114. On the question of whether such policies had caused problems in other countries, she said that there was “always” opposition—

“Oftentimes it is from religious organisations that have a particular cultural definition of marriage and feel uncomfortable about same-sex marriage. However, I have looked at the situation in most of the European countries and in the one North American country that has a national law, and I think that public opinion—with one exception—became more tolerant of homosexuality rather than less after same-sex unions came in, although that increase in tolerance was a year or two afterwards. I would not say that that increase in tolerance is necessarily causal always—there are general long-term trends towards an increase in tolerance for homosexuality. However, such policies have brought great visibility to lesbian, gay, bisexual and transgender communities and, in general, it has been positive visibility.”

A catalyst with consequences?

115. John Deighan (Bishops’ Conference of Scotland) suggested that a principle was being established with the Bill—

“… if you support this bill, you are saying that men and women are interchangeable and that gender really does not matter in any field of life. That area could easily be progressed.

“In some of the evidence and discussion, the belief that marriage is intrinsically and in essence built around the complementarity of male and female has been paralleled to segregation—we heard that earlier. Parallels have been drawn with the civil rights movement against racism. If there is to be any progression, that is where we have to look. Those are the principles...
that are being established just now: if you hold that view, that is how you will be perceived by society. That ties in with the public sector equality duty and that is the mindset of those who have proposed this change. I have attended EHRC presentations where people have said, “There’s terrible discrimination in Scotland because some people believe sex only belongs in marriage between a man and a woman.” In other words, they are saying that in our society it is unacceptable to hold traditional Christian beliefs, traditional Muslim beliefs or the traditional beliefs of Judaism. This approach does not lead to pluralism but to the victory of a complete redefinition of marriage and its enforcement on all of society.”

116. Referring to his earlier comment describing marriage as “a covenanted relationship of love” and broadening it out from Jewish and Christian traditions to those of some Hindu and Muslim societies, the Rt Rev Dr John Armes (Scottish Episcopal Church) was asked why that should be restricted to two people. He answered—

“Marriage has existed in different forms in different cultures over the centuries. That is why the question whether the state has the right to define marriage—to say who can get married—is relevant. I personally, and the church that I represent, would say that the state has that right. If the state were to say that marriage could be between three or four people or more, I suppose that the state would have the right to do that. However, in the context of the Christian faith, marriage has always been between two people. For me, the idea of the covenanted aspect of the relationship is that it is a covenant between two people.”

117. He added that the Scottish Episcopal Church was currently “engaged in a conversation” on whether it could officiate at same-sex marriages, but that whether people could marry more than one spouse at one time would not be part of that conversation.

118. The Scottish Youth Parliament was asked, in relation to its position that two people in love should be allowed to demonstrate their love and commitment to each other in a way that reflected their personal feelings for each other, why it had chosen the number two. Louise Cameron (Scottish Youth Parliament) responded—

“We firmly believe that marriage is between two people. Polygamy is not an equal relationship—indeed, it is usually against the women involved—whereas we believe that a relationship between two people can be equal.”

151 Scottish Youth Parliament, written submission.
Scottish Government

119. The argument that, if any two people in love with each other should be allowed to marry, by the same logic, two closely related people or, indeed, any three people should be allowed to marry, if they all loved one another and were willing, was raised with the Cabinet Secretary. He responded that, in terms of marriage, the Bill would do “one thing only”\(^\text{153}\), namely to allow people of the same sex to marry each other—

“Let us confine ourselves to the provisions of the bill ... Wider issues of defining marriage and so on are not the subject of the bill, which deals with one change and the consequences arising from that. Any other issues around the definition of marriage would require additional legislation, but we have no plans at the moment to introduce additional legislation around the definition of marriage.”\(^\text{154}\)

120. Responding to a similar point, that reforming marriage under the Bill could open marriage to further reform in future, he said—

“Well, we live in a democracy. My view is that this is an overdue reform of the law, but I do not envisage any further reforms to the definition of marriage, as it has been described, in terms of who can enter into a marriage legally in Scotland. My view is that, once the bill is passed, we as a Government certainly have no intention of introducing further legislation to amend marriage legislation in the future.”\(^\text{155}\)

Conclusion

121. We note the differing views expressed in evidence on the meaning and purpose of marriage.


PROTECTIONS AND FREEDOM OF EXPRESSION

The ‘opt-in’ approach for religious and belief celebrants

122. The Bill would add provisions to the Marriage (Scotland) Act 1977 to allow celebrants (of religious and belief bodies) to be authorised to solemnise same-sex marriage. Under the Bill, the Scottish Ministers would only be able to prescribe a religious or belief body so that its celebrants were authorised to solemnise same-sex marriage if the body requested to be so and if Ministers were satisfied that the body met the qualifying requirements.

123. The Bill also provides that nothing in those new provisions would impose a duty on—

- any religious or belief body to request to be prescribed so that their celebrants could solemnise same-sex marriage
- any religious or belief body to nominate members to be empowered to solemnise same-sex marriage
- any person to apply for temporary authorisation to solemnise same-sex marriage;
- a celebrant approved to solemnise same-sex marriages to solemnise such marriages.

Need for protections

124. The Humanist Society Scotland stated—

“When considering calls for conscience clauses or protection of freedom of speech on this issue, the HSS would ask for equal marriage to be treated in the same way as equality law on race, gender or disability and those with other protected characteristics. When these laws were framed lawmakers did not consider enshrining in law special rights for those opposed to treating women, minority ethnic people or disabled people equally.”

125. Asked whether marriage was not different, Ross Wright said—

“... the position of the Humanist Society is that it is not different. Because the subject is sexuality, we seem to be getting into a real state over it and treating it differently from race or gender. It is puzzling to me why special provision is being made to bend over backwards to allow people that. Of course, they will still have the right to disagree and to say what they want about it. We are simply arguing for the right for people who want to have a same-sex marriage to have one.”

156 Humanist Society Scotland. Written submission.
126. Ross Wright also questioned whether protections were even necessary—

“People who are not registrars are given the right to conduct marriages, not the duty to conduct marriages. It is important to realise that. Because of that, it is a mystery to me why we even need the opt-out and opt-in provisions, which are an additional part. If anybody approaches me and asks me to marry them, I do not need to do that. I do not need to give a reason—I could be … otherwise busy that day. There is no need for me to give a reason why I will not marry someone.”\(^{158}\)

127. The Rev David Coleman (United Reformed Church) echoed Ross Wright’s view—

“… religious or faith celebrants have a right but not a duty to solemnise a marriage. We would like to safeguard the option for people not to go ahead with any marriage for conscientious reasons. That approach goes back a long time in the history of most churches, irrespective of the sort of marriage that we are talking about.”\(^{159}\)

Protection for faith groups against celebrating same-sex marriages

128. Various groups raised concerns about the Bill’s approach to protecting faith groups’ right to decide whether to celebrate same-sex marriage. Dr Salah Beltagui (Muslim Council of Scotland), for example, said—

“We collected evidence about the protections that the bill offers from many sources, all of which suggest that the protections might not be sustainable when a case is taken further, for example to a higher court such as the European Court of Human Rights.”\(^{160}\)

129. He described the current system, with celebrants opting into the government system and conducting a marriage at any place as “a good system”\(^{161}\) that was “working very well”\(^{162}\). He said, however, that celebrants that he had spoken to had said that they would have nothing to do with the system of marriage proposed in the Bill—

“… they will have their own system and keep away from what is proposed. That is one example of how this interference in the definition of marriage will force some groups to have their own system, whereas the current system is working well at the moment. That is mainly because of this progression, and what you said yourself about the slippery slope. When I discuss the matter with celebrants, they say that they have heard it all before. That is an

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example of what would happen. This situation between the Government and the celebrants could result in that."\textsuperscript{163}

130. Pressed to explain why, given that celebrants would be able to continue to offer marriage as they wished, Dr Beltagui replied—

“That is what has been said, but celebrants feel, because of the history of this process, that, once the legislation is passed, they will be forced to do it. That is the feeling, because of what has happened, this progression …”\textsuperscript{164}

131. Asked what in the Bill could be said to cause that perception and how the Bill could be amended to address it, he said that those people’s minds could not be changed—

“… because they see what is coming. It is not about what is in the bill. We welcome what is in the bill—an opt-in system, which is good. However, celebrants are now in an opt-in system, and they have found that what is proposed will be called marriage, like any other marriage. They want to have their own marriage system separate, so that it does not get confused with the system that has same-sex marriage included. That is what we heard from the people in the front line of this relationship.”\textsuperscript{165}

132. Kieran Turner (Evangelical Alliance Scotland) welcomed the fact that there would be an opt-in system and that the Scottish Government had recognised that churches should be free to conduct marriages according to their conscience and according to their beliefs. He cautioned, however, that that opinion was not shared by everyone—

“There are definitely some folk in Scotland who would say that churches should be forced to do this, so we welcome the fact that the Scottish Government has taken a sensible approach on that.”\textsuperscript{166}

133. He went on to outline the Evangelical Alliance Scotland’s concerns relating to the long-term robustness of the protection—

“How long will it hold out for? Will there be a court case at some point that will try to force a church to marry a couple that it does not feel that it can marry? We have already started to see moves towards that in England, and our concern is that that will come in Scotland. A case might go all the way to the European court, where it may be that the protection is struck down.

“At the moment, our understanding is that it is still considered to be within the margin of appreciation for states, so it might be that that does not happen

\textsuperscript{163} Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 5 September 2013}. Col 1417
\textsuperscript{165} Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 5 September 2013}. Col 1418
now. However, we would be concerned about that happening at some point in the future.”

134. He then described wider concerns for the future—

“Our concerns ... are much wider than the issue of the celebrant and the ceremony. They are about churches, organisations and individuals who still hold to a traditional view of marriage. Will their views be accepted in wider society? We appreciate that it is not the Government’s intention at the moment to say that that is an unacceptable view to hold, but will that come down the line? Will that have wider effects on churches and individuals?”

135. The Rev David Robertson (Free Church of Scotland) took a similar line as regards the long term—

“Although I would like to think that opting out or opting in would work, in reality, it will not. At the very best, it will last for a short while if we have a state-imposed morality and we regard opposition to same-sex marriage as homophobia or its equivalent and therefore equivalent to racism. I do not think that anyone in the Parliament would argue that someone who wishes to be a racist and who says, for example, that they will not marry a black person to a white person should have an opt-in or opt-out. The default moral position of those who—out of conviction rather than political cynicism—argue for same-sex marriage is that opposition to it is exactly the same as racism. Therefore, inevitably, whatever the good wishes of politicians right now, an opt-in or an opt-out will not work, because politicians change every three or four years. I would love to think that teachers, charities and others will have complete freedom to express a view that goes against the zeitgeist and the current culture, but I suspect that that will not be the case.”

136. Ephraim Borowski (Scottish Council of Jewish Communities) also expressed concerns—

“I represent a community that has within it a number of branches that take diametrically opposed views on the issue. However, the one thing on which they are all absolutely in agreement is that there should be no compulsion on any one of them to follow the views of the other. Therefore, whether it is a matter of opting in or opting out ... there have to be protections for individuals and organisations. Much of the detail of our submission is to do with the wording of the draft legislation. We want to ensure that the protections are maintained and that there cannot be accidental slippage, as it were.

“We have given several examples of how we think the current wording might result in some people not being able to opt in to do what they want to do because, for example, of the happenstance that they do not currently have

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an officially recognised celebrant. The bill is worded in such a way that a faith group would have to have a celebrant from the beginning in order to be able to carry out the ceremony. Likewise, individuals might find themselves compromised because they are prepared to conduct same-sex marriages but the organisation to which they belong says that it does not want to do that.”

137. Describing the protections in the Bill as “very weak”, Dr Gordon Macdonald (Scotland for Marriage) said—

“The Scottish Government’s intent is probably honourable—I would take what it says at face value—but I do not think that it has backed it up with legislative support. In a sense, what the Scottish Government has indicated to us informally is that this is Scotland, everybody knows each other, we are all friends here, nobody will do the sorts of things that happen in England and therefore we do not need legal protection—it can all be guaranteed by guidance and by a sort of informal agreement with the registrar general or the Lord Advocate. That is the approach that the Scottish Government has taken.

“I do not think that that is sufficient. There are things that the Scottish Parliament can do in terms of legislation to protect charities. We can look at the definition of public benefit ... We can change the charity legislation so that the Office of the Scottish Charity Regulator cannot do to churches what it is doing to St Margaret’s adoption agency at the moment. We could introduce a statutory right for parents to be informed and—depending on the age of the child—to withdraw their child if they are uncomfortable with what they are being taught. There are other things that can be done under devolved legislation.”

138. The Rev Dr Alan Hamilton (Church of Scotland) indicated that the church broadly shared those concerns—

“There are some important points to be made. First, the Church of Scotland has no doubt that the Scottish Government is offering the protections that it is offering in good faith and is seeking to preserve the right of individual religious bodies and their celebrants to make a decision.”

139. He pointed out that the overall package of reforms included two “important parts” not present in the Bill, namely the delegated legislation and the amendment to the UK Equality Act 2010—

“...we have the gist of what that might be but we have not seen the wording. Those are important caveats, to which I would add another.
“There is deep concern that, even if everything falls into place, as the Scottish Government would like it to do, the proposed legislation will be ineffective in the face of a sustained challenge under the European convention on human rights. Once same-sex marriage is introduced, it will be extraordinarily difficult for a Government—a state—to discriminate. If the Scottish Parliament introduces same-sex marriage, the Scottish Government—the state—will find it extremely difficult either to discriminate or to allow others to do so.”

140. He believed that there was a vulnerability in the arrangements envisaged by the Bill because religious and belief bodies would be “seen as agents of the state”. He urged the Parliament to consider that, and highlighted the Church of Scotland’s proposal—

“...the vulnerabilities of the proposed scheme may be reduced if, instead of religious and belief bodies being agents of the state in carrying out marriages—as is currently envisaged in the statutory scheme—the religious ceremonies that they offered were simply recognised by the state as being efficacious in marrying two people. A religious body or a belief body would carry out what is essentially a private religious ceremony but the state would recognise it.”

141. Nevertheless, he said that, “even with that innovation”, the Church of Scotland had “deep concerns that, when challenged”, the proposed legislation would “unravel”, adding that there was “plenty of high-level legal opinion to that effect.”

142. The Rev David Robertson said—

“I do not think that any protections that the Parliament puts in place will ultimately last if the conception is that this is about equality ... To me, the approach is intended to help to get the bill through but, ultimately, we will end up in a situation in which people who oppose same-sex marriage will automatically be regarded as bigots and as people who are discriminatory and who should therefore be discriminated against. I think that, in a short space of time, schools that do not teach the new morality and charities that do not accept the new morality will be legislated against. In fact, I do not think...”

that there will need to be legislation; I think that the courts will find against us and we will get hammered.”

143. Turning to the actual prospect of defending in court the position of faith groups not wishing to celebrate legally valid same-sex marriages, the Rev Dr Alan Hamilton said—

“We are voluntary bodies; we rely upon our members giving donations. The thought of years of exhausting and incredibly expensive legal challenge is very concerning. That is why in May the General Assembly of 2013 instructed my committee, together with other councils and committees in the Church of Scotland, to consider … whether it is worth the Church of Scotland continuing to offer marriages in Scotland. The matter gives us considerable internal problems and we are deeply concerned about the external threat.”

144. Ephraim Borowski suggested that the practice in some European countries and in other jurisdictions of civil marriage and religious marriage being completely separate from one another, with two separate ceremonies could occur more in Scotland than currently as an “unintended consequence” of the Bill—

“… we need to be conscious of the fact that what happens in all the jurisdictions in the UK is not the same as what already happens everywhere else regarding what is currently referred to as marriage. Following what one might call the European model may be a way of avoiding some of the problems that are being thrown up around the table.”

145. Asked about the article 9 protections in the ECHR, allowing the freedom to practice religion, and about the legal opinions that any attempt in the European Court of Human Rights to force a religion to hold same-sex marriage ceremonies would inevitably fail because of article 9, Kieran Turner said—

“There are conflicting legal views on this, which is where some of the concern comes from. We have not been there yet and no cases have gone to the court yet. Our concern is that those cases will come and we will be in danger. We know that, in a number of areas, there have been concerns about the article 9 protections and how far they go, particularly in the areas in which protected characteristics conflict. Our concern would be that doors would potentially be opened to other situations arising.”

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146. John Deighan (Bishops’ Conference of Scotland) felt that the difficulty with using the ECHR as a protection was the immense cost associated with it. He added—

“In its interesting submission to the Government’s consultation, the Faculty of Advocates, without taking a position on the principle, pointed out that what will definitely give rise to difficulties and lead to conflict is section 149 of the Equality Act 2010, which relates to the public sector equality duty. This is not just about a re-understanding of marriage but about bringing down the weight of the state to enforce that particular understanding, which is what will happen through the public sector equality duty. That constitutes a considerable threat.”

147. Asked what, in practical terms, he meant by “bringing down the weight of the state”, he replied—

“As we heard earlier, those employed in the public sector, such as teachers, will have to promote the particular understanding of marriage that the state has set out. The public sector equality duty makes that clear. In England, for example, teachers have received advice from the Equality and Human Rights Commission that, in order to show that they have satisfied the public sector equality duty, they have to implement LGBT history month. That month would conflict with things, especially in Catholic schools, and there are immediate concerns for us in that regard.”

148. Dr Macdonald argued that the Bill could not be seen in isolation from other legislation, such as the Equality Act 2010 and the European convention on human rights—

“The problem that arose when adoption was considered by the Equal Opportunities Committee in the previous session of Parliament was that ministers gave lots of assurances that nothing in the Adoption and Children (Scotland) Bill would force Roman Catholic adoption agencies to do anything or shut them down. That was technically right; nothing in that act would do that. The equality legislation at Westminster is the problem that has led to most of the agencies shutting down.

“Ministers can give the same assurances on the Marriage and Civil Partnership (Scotland) Bill, but members have a moral responsibility to ask themselves whether the protections are robust and can withstand an ECHR challenge. There is already an attempt south of the border to challenge the Marriage (Same Sex Couples) Act 2013—which was passed only a few weeks ago—in regard to the Church of England’s position. It is almost certain that a similar challenge will arise north of the border. Therefore, members

must ensure that not only this bill but other legislation—to the extent that they can influence it—is amended to provide protections.”

149. John Deighan recognised that there were substantial protections around the celebration of a marriage ceremony, but did not think them to be “fully robust”. He said—

“… the crux of the matter … is that a religious celebrant provides a public service, so there will be avenues through which those protections could be challenged further down the line. I believe that that has happened in Denmark, where a church has been told that it must provide religious celebrants. I think that there will be a challenge on that issue.”

150. The suggestion that churches in Denmark did not have the freedom to opt out was raised with Dr Kelly Kollman (University of Glasgow). She said—

“…my understanding from having looked at the case is that the law there has protections. As far as I know, most of the controversy happened when the church itself decided that it wanted to do blessings, which was not part of the original legislation that was passed in 1989. There was a lot of internal controversy in the church and a number of members of the church were not happy with those blessings. However, as far as I know, on marriage, there was far less controversy.”

151. The Equality Network also commented on the position in Denmark—

“The Church of Denmark is a state church, unlike the Church of Scotland, or even the established Church of England. The Church of Denmark cannot decide its own laws, and has no decision-making body like a General Assembly or Synod. Church law for the Church of Denmark can only be decided by the Danish Parliament, and there is accordingly a government Minister for the Church.

“Church of Denmark law is proposed by the Danish government in consultation with the Church, and there was consultation on the proposals for same-sex marriage. The majority of bishops and clergy of the Church of Denmark support same-sex marriage, but a minority are opposed, and the law, which came into effect in 2012, allows clergy who disagree to opt-out of conducting such marriages. The law is fully permissive and there is no compulsion on any celebrant. Two of the ten Church of Denmark bishops opted out of developing the same-sex marriage rite, and around one third of clergy have opted out of solemnising same-sex marriages.”

“There are of course many other religious bodies in Denmark, many of whom provide legally-effective marriage. They are all free to decide for themselves whether to conduct same-sex marriages.”¹⁹⁰

152. Aidan O’Neill QC also pointed to a “different relationship” between the Church of Scotland and the state compared with the relationship in Scandinavian countries with established churches—

“As I understand it … the established church, which is the Lutheran church, has been seen as a department of state, in a similar way to the Anglican settlement. There is a minister in the Government who is in charge of church affairs. There is therefore a different relationship from the traditional relationship in Scotland, particularly because the Church of Scotland is not an established church. It is recognised as the national church under the Church of Scotland Act 1921, but it is most certainly not a department of state. That would be completely contrary to the whole reformation settlement and Calvinist ecclesiology.”¹⁹¹

153. Like John Deighan, Dr Gordon Macdonald also felt that the protections were insufficient—

“… the issue comes down to what a public function is … In the Ladele case, the court ruled that Ms Ladele was a public authority because she performed a public function and yet the public function that a civil registrar performs is exactly the same public function that a minister of religion or a religious celebrant performs. Therefore, it then becomes an issue of balance of rights, and what a court would rule as regards the balance of rights may very well change over time and may very well change from one jurisdiction to another … The religious celebrant performs a function for the Government, but they do it within the context of a religious service.”¹⁹²

154. Tim Hopkins rejected the suggestion that religious bodies performed a public service when conducting legally valid marriage ceremonies—

“No. I would not call marriage a public service. As far as marriage that is done by religious bodies is concerned, it is a religious function—it is a sacrament as far as some churches are concerned … It is recognised in law, but it is clearly a religious function. In fact, the amendments to the Equality Act 2010 that are going to be made if and when the bill is passed make it clear that it is a religious function of churches.”¹⁹³

¹⁹⁰ Equality Network, supplementary written submission.
155. Asked what robust protections were in the Bill, Colin Macfarlane (Stonewall Scotland) said—

“We have had a lengthy consultation over the past two years, and the Scottish Government has listened to those who have concerns about protections. The protections in the bill are robust and strong, and the Government has got the balance right between freedom of speech and freedom of religion.

“The modifications and amendments that the Scottish Government has asked the UK Government to make with regard to celebrants et cetera are strong, and the Scottish Government should be applauded for listening to those concerns.”

156. Pressed on that point and, in particular, on whether the protections would work in practice, he said—

“I do not think that you are ever going to prevent people from making mischief, and you will never have a cast-iron guarantee that somebody is not going to try to take someone to court at some point, but the protections and the amendments to the Equality Act 2010 are—as I said—robust.”

157. He added that, across Europe, nine countries under the jurisdiction of the European Court of Human Rights had had equal marriage for around 12 years, and “not one single religious group in those countries” had been forced to carry out same-sex marriage. He reiterated his point that the protections were “strong and robust” in domestic law as well as in European and international law.

158. Tim Hopkins (Equality Network) agreed—

“… the Scottish Government has done a very good job of drafting the amendments to the 2010 act and getting them agreed by the UK Government. The legislation is now much stronger than the draft that was published last December. The Scottish Government has really listened to the concerns of churches about ensuring, for example, that people who take part in religious services, such as organists and those in the choir, can opt out of same-sex marriages, which they are free to do.”

159. He continued—

“The Government has also listened to concerns about ensuring that people who control religious premises are able to veto any other group that rents
those premises conducting a same-sex marriage. Those protections are all there.”

160. Speaking about the protections that the Bill would afford to religious celebrants, Mark Bevan (Amnesty International) said—

“Having reviewed the proposals in the bill, we have no issues with those at all. The Lord Advocate has also made his position very clear.”

161. He also said that Amnesty International’s lawyers were not aware of any issue in the courts in those countries that had had legislation in place for some time.

162. The Rev David Coleman (United Reformed Church) also spoke in favour of the approach taken in the Bill—

“… we have been convinced that the guarantees that are contained within the bill are adequate. From one point of view, they might even be seen as excessive, but it might be sufficient guarantee that they are there and that no one is forced to engage in something that they are spiritually disinclined to do … As I said, we support the bill, because we believe that it contains guarantees, both to enable same-sex marriages to happen and to protect those who wish not to be party to that, while, from a public order point of view, not allowing them to bully those who wish to go ahead and prevent them from doing that.”

163. He said, however, that he was against amending the Bill to weaken the protections—

“We in the United Reformed Church greatly respect individual conscience and opinion, which is why we have not expressed an opinion as a denomination. We know that we contain people with different views. Having followed the process over the past two years, it seems that, because the protections are so thorough, the bill does not give total equality. However, on the other hand, at the end of the day, when a couple come and ask to be married, that will make no difference to them whatever. Therefore, if the protections reassure those who are opposed, let us go with them. We certainly do not advocate that the protections be weakened; we merely note that they bring into effect a state of inequality, although that is perhaps necessary to enable equality to happen.”

164. Turning to concerns about the European Court of Human Rights and the European convention on human rights, Tim Hopkins said that legal opinion from “experts in human rights” was very clear—

“... article 9 of the convention, which protects the freedom of religion and the freedom to manifest your religion, protects churches from having to conduct same-sex marriages. If the Scottish Government had written into the bill that churches had to conduct same-sex marriages—clearly it has not, but if it had—those churches would be able to win cases in the European Court of Human Rights because article 9 protects them. So, the domestic protection in the amendment to the Equality Act 2010 is underpinned by the European convention. That means that there is absolutely no prospect of anybody successfully taking a church to court and saying that it must conduct a same-sex marriage. The bill improves religious freedom by giving religious groups freedom to choose. We have always said that that should be the case and we are glad that the bill does that.”

165. John Deighan was asked whether, in any of the nine European countries that had already introduced same-sex marriage, his denomination had been compelled to perform same-sex marriage—

“The Catholic Church has not.”

166. Answering the same question, the Rev Dr David Easton (Methodist Church in Britain) said—

“There are Methodist churches throughout mainland Europe, although they are not large ones. I do not have the absolute figures at my fingertips to answer your question accurately. However, I am not aware of any instances in which member churches in those countries have been obliged to conduct same-sex marriages.”

*Freedom for faith practitioners and groups wishing to celebrate legally valid same-sex marriages*

167. Asked whether the current prohibition on performing same-sex marriages itself represented an infringement of his faith group’s religious freedom, John Phillips (Religious Society of Friends (Quakers)) said that he believed that it was—

“We have a number of gay couples in our Quaker meetings who have civil partnerships. From talking to them and working with them we can see that they feel that they have not been given the same opportunity, either by the Society of Friends or by society at large, to sanctify the relationship within the context of the religious community in which they practise. That has become clear to me really only over the past five years or so, since there have been a number of civil partnerships. We can, of course, hold meetings for worship to
bless those couples, but there is something rather special about making the declaration itself within the context of religious worship. It is that which they feel singles them out as being different from opposite sex couples and which we have learned to greatly regret.”

168. Answering a similar question, Mark Bevan (Amnesty International) said that he “absolutely” believed that freedom to practise was an important human right and that it was a problem that many faiths in Scotland wishing to perform same-sex marriages and practise their faith in that way were forbidden to do so.

169. Ross Wright (Humanist Society Scotland) argued that the opt-in system was uneven—

“People whose organisations have opted in, like humanists, could refuse to conduct marriages, and that would be fair enough. However, freedom of conscience for people in those organisations that opt out—a Catholic priest or a minister of the Church of Scotland, for example—would not be respected. Conscience needs to be looked at from both directions.”

Protections for public-sector employees and commercial-service providers

170. It was put to Tim Hopkins that the question of protections had wider implications, for example in respect of people who are employed by public bodies? Asked whether there were robust-enough protections for those people, he replied—

“A relevant case down south is Adrian Smith v the Trafford Housing Trust. Mr Smith posted on his personal Facebook page that he disagreed with same-sex marriage and the trust demoted him because of that. That should not have happened. He went to court and he won his case. The court was very clear that that amounted to unlawful dismissal. The law is already clear that you cannot be subject to a detriment by your employer because you have views against same-sex marriage. We think, therefore, that the protections are already there.”

171. John Deighan (Bishops’ Conference of Scotland), however, felt differently—

“We believe that there will be detriments to people in terms of stating their belief. Employment law would need to be amended, because an employer could say that it does not think that someone weighs up to the latest standard

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on equality because of their beliefs on marriage. As we have heard, some people already think that such beliefs are akin to racist beliefs.”

172. He argued that the equality duty would “certainly” need to be changed so that people working in the public sector did not feel that they needed to promote a value “at odds with their beliefs”. He told us about people phoning his office to say that they had been told to implement diversity training schemes in their places of work—

“Those schemes are created in such a way that they stigmatise people who disagree because of their understanding of marriage. That is the breadth of detriment that we are facing in society if we go ahead with the legislation.”

173. He called for a change to the Equality Act 2010 to give an accommodation to allow people to distinguish between two things—

“... sexual orientation and the practice of the sexual behaviour. Those two things are conflated. I think that it is wrong to in any way discriminate against someone in an unjust manner based on their sexual orientation. I will give an example of the issue that we face. There might be someone working in a Christian organisation who has a particular sexual orientation, but if they want to propose their lifestyle of living in a same-sex relationship to children who they are perhaps trying to instil with a Christian education, those are two different things. However, the 2010 act does not allow us to distinguish between the two. That is the context that gives us the threat.”

174. Pressed to point to any ruling in court thus far under the public sector equality duty that would lead to the situation he described, he spoke of the Ladele case—

“... Lillian Ladele was told that, because she can get to church on a Sunday, her religious freedom was not being infringed. That is a very narrow understanding of religious freedom …

“It was Neuberger in the UK Supreme Court who said that Lillian Ladele’s religious freedom was not being infringed. The European Court of Human Rights stated in its judgment that it could not dismiss the issue as easily as that. We are looking at a very narrow understanding of religious freedom.”

175. Dr Gordon Macdonald (Scotland for Marriage) also felt that the possibility to opt in or out should apply more widely—

“Individual conscience should be respected in a free society. That does not just apply to a narrow band of people; it applies to everyone if society is to be truly free. If you say to someone that they have no right to a conscience
when they work for the public sector, which is essentially what you are saying, that is no longer a free society but one that is becoming repressive. \textsuperscript{215}

176. Describing freedom of conscience for people who work across the public sector as “crucial”, he said—

“For instance, a local authority could easily provide a registrar service without imposing on the conscience of any of its staff. There is no problem in that being facilitated at local level. The problem is that some people and organisations want to force people to officiate at same-sex marriage or civil partnership ceremonies as part of an ideological agenda. That will apply not only to civil registrars but right across the public sector, particularly but not exclusively in schools. The question that members must ask themselves is whether they want to shut off careers in the public sector to people who have a conscientious objection to marriage being between two people of the same sex.”\textsuperscript{216}

177. Ephraim Borowski (Scottish Council of Jewish Communities) said that a distinction between rural and urban areas was relevant—

“Normally, in urban areas, reasonable accommodation will be possible, because if a particular registrar does not want to get involved in something, he or she will have colleagues who can take over and who could be scheduled to do that shift or whatever.”\textsuperscript{217}

178. He said that there was also another distinction, between people already in post – who had applied for it and been appointed with a reasonable expectation as to what the job involved – and people taking up a post in the future, knowing about the new legislation—

“What worries me is exemplified by the Ladele case. There is no doubt that there were other people in Islington who could have undertaken that duty, and Ms Ladele had been in post for many years. If we think about those two distinctions, that produces four classes. Ms Ladele should have been in the most protected class, having been in post in an urban area, with other people who could have been scheduled to do the work. Nonetheless, that became the crux of a case that has gone all the way to Europe.”\textsuperscript{218}

179. Dr Macdonald elaborated on that point—

“The European Court of Human Rights recognises a margin of appreciation for nation states. The UK courts did not support Ms Ladele in her case. In the

\textsuperscript{215} Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 12 September 2013}. Col 1443

\textsuperscript{216} Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 12 September 2013}. Col 1445

\textsuperscript{217} Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 12 September 2013}. Col 1445

\textsuperscript{218} Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 12 September 2013}. Col 1445
Netherlands, the Parliament and the courts have ruled on the reasonable accommodation that registrars do not necessarily have to perform their function. That facility can be made—it would be within the competence of the Scottish courts to come to that view. If the Parliament gave a lead on that, it might increase the chances of that happening.\(^\text{219}\)

180. According to the Rev Dr Alan Hamilton (Church of Scotland), the church’s legal questions committee was “deeply concerned”\(^\text{220}\) that public servants, whether registrars or teachers, and particularly those who had begun their employment before the Bill was brought forward, would “find themselves prejudiced”\(^\text{221}\) and “might even lose their jobs”\(^\text{222}\). For registrars and “others who might find themselves in positions of considerable conflict, including teachers”\(^\text{223}\), he called for protections equivalent with those for faith celebrants.

181. The Rt Rev Dr John Armes (Scottish Episcopal Church) agreed—

“I simply concur with what Alan Hamilton has just said. We in the Episcopal Church have similar concerns.”\(^\text{224}\)

182. Tim Hopkins was asked whether the Scottish Government’s plan that people on the periphery of marriage, such as chauffeurs and photographers, would not have the freedom to choose not to take part in a same-sex marriage was just to move the discrimination away from the LGBT community on to the religious community. In his reply, Tim Hopkins accepted that there would be differences of opinion on the matter but made the point that the law would not change—

“The situation will not change at all. Wedding photographers are already required by law not to discriminate against civil partnerships so it is already the case that a commercial organisation that is selling photography services must not discriminate on grounds of religion, gender, race, disability or sexual orientation, which means that it must provide its services for civil partnerships.”\(^\text{225}\)

183. He said that, in the Equality Network’s view, the Scottish Government had “got it right”\(^\text{226}\) in the context of a difference between the operation of religious bodies, including the provision of all kinds of religious services by religious bodies,
and the provision of commercial services or employment by somebody who has a personal religious belief—

“We do not think that it is appropriate to allow somebody’s personal religious or philosophical beliefs to give them an opt-out from antidiscrimination legislation as an employer, for example, or as a commercial business selling services to the public. Where would that end? If somebody has a philosophical belief that is strongly against mixed-race marriages, are we saying that that person should be able to refuse to supply services to people who are entering a mixed-race marriage? Are we saying that public servants such as the people who empty … rubbish bins, for example, will be allowed to say, “Well, I strongly disagree with same-sex marriage, therefore I don’t want to empty the rubbish bins of people who are in same-sex marriages.” I do not want to sound flippant, but the law says that such sexual orientation discrimination should not happen.

“We are very clear that where a business is supplying commercial services to the public, where public services are provided to the public using taxpayers’ money, and where non-religious employers are employing people, every member of the public and every employee should be treated with respect. I believe that the large majority of people would not have a problem with that. I may have a religious or philosophical objection to a number of things, but that does not mean that I will treat my colleagues at work, or the people to whom I would sell food if I were running a food stall with disrespect and refuse to serve them.”

Calls for a conscience clause, comparable with the Abortion Act 1967

184. Asked whether the way that abortion was enshrined in law was a good model, Kieran Turner (Evangelical Alliance Scotland) said—

“Yes, I think that that works well for that particular case. As has just been outlined, in most cases, discriminating against someone for any reason is wrong. Most of us agree on that. For most businesses in most situations, that would be wrong. Again, I will use as an example a member organisation that we might have. If a church runs a food bank, it will never turn away someone for any reason of discrimination. That would not happen and it would be wrong if it did happen. However, there has to be an accommodation for certain views. If someone is legally entitled to a public service, provided that they can access that public service, we should make accommodation. We should not try to batter rights against each other; we should take a reasonable and commonsense approach. ... The conscientious objection approach could work in particular circumstances.”

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185. Tim Hopkins (Equality Network), however, did not think that same-sex marriage could be compared to abortion—

“You are, of course, quite right that there is a conscientious objection route for people who work in the health service who disagree with abortion. There is also a similar route for people who have a conscientious objection to fighting in the armed services in wars. Why are those routes provided? For abortion, it is because if a person has particular religious beliefs about it and is asked to be involved in one, that person would believe that they were being asked to be involved in murder. The same is true for people who have a conscientious objection to fighting in the armed services during war. Those opt-outs exist so that people are not required to be involved in committing what would be murder, according to their own beliefs.”

186. He explained that he thought that “very different” from asking a civil registrar to sign off on a civil same-sex marriage, which he described as “quite reasonable”.

187. Ross Wright (Humanist Society Scotland) expressed a similar view—

“Abortion is a fundamentally different thing from two people getting married. Nobody is dying. To put the two together is ridiculous. However, it is always useful to turn things on their head to determine, for instance, whether it would be reasonable for me, as an atheist registrar … not to marry somebody if I knew them to be religious. That would be unthinkable. Why, uniquely in this situation, with sexuality, are we making a special provision? If it is the opinion of MSPs that lesbian and gay people should be regarded as equal, then everybody is equal and there is no hierarchy of equality. I would fight equally for the privilege of people to believe what they believe and for their religion. All those things are equal.”

188. Tim Hopkins went on to make the point that civil marriage ceremonies were not allowed to include any religious content, so religion did not enter into it—

“The registrar is simply there to conduct a completely secular ceremony and then to sign the piece of paper to acknowledge that the couple have said their vows and signed up and that their witnesses have signed as well. Asking somebody to do that is not comparable to asking somebody to commit what they believe is murder.”

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189. He pointed out the similarity with a civil registrar with Roman Catholic beliefs against divorce who would not be allowed to refuse to marry divorced people—

“We say that civil marriage is an entirely secular, non-religious function and that civil registrars should provide that function to all couples regardless of their personal beliefs about those couples' lifestyles.”

190. Dr Salah Beltagui (Muslim Council of Scotland) was asked whether he agreed that abortion and war were not comparable with marriage. He replied—

“The case of marriage is exactly like abortion. It is an issue on which people will differ. We accept that abortion is a controversial issue, and marriage is at the same level, or perhaps an even higher level. Abortion involves one person with an unborn baby, but the issue of marriage involves the whole of society, where everyone has to adapt to the new vision.”

191. He emphasised the importance for him of the word ‘conscience’—

“… I do not see that word in the bill at all. That is something that we need to introduce. This committee is called the Equal Opportunities Committee. The issue is not about equality; it is about equal opportunity. Equality could mean that we treat people badly but in the same way. We have to give people equal opportunity to practise their religion, no matter their race or whatever, without being forced into something that they do not want.”

192. Dr Gordon Macdonald (Scotland for Marriage) said that, for many people of faith and others, it was a “fundamental” point—

“It is of equivalent moral significance to the issues that arise when a doctor performs an abortion—in fact, it might even be of more significance.”

193. Colin Macfarlane (Stonewall Scotland), however, supported the view expressed by Tim Hopkins—

“I think that most gay people listening to the comparison of gay people’s long-term committed loving relationships with abortion would be really hurt and disappointed by that.”

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194. Reiterating the point that registrars perform a public service, paid for by the public purse, he said—

“LGBT people pay their taxes in the same way as everybody else. They deserve and expect exactly the same standard of service as everybody else, be it good or bad. Tim is right that providing an opt-out is a Pandora’s box, because as soon as you have an opt-out in one area, for example same-sex marriage, you can then start having questions around opt-outs for people who have issues around mixed-faith marriage or mixed-race marriage and, as Tim also clearly stated, for people who might have objections to divorce. The fact is this: registrars provide a public service that is paid for by the public purse and everybody, including gay people, deserves exactly the same standard and level of service.”

Fears of attrition

195. Regarding his comment that, until gay people were “seen as equal in the eyes of the law”, the distinction in society’s view of gay people would remain, Colin Macfarlane (Stonewall Scotland) was asked how that view reconciled with the Bill’s opt-in approach allowing any religious organisation that so wished not to opt in and, therefore, continue with its practice. Specifically, would there be calls in, say, 10 years’ time, if the situation evolved further, for those organisations to be required to opt in? He said that he believed that there would not be—

“The opt-in is right and the balance in the bill is right. It is not for any of us on the panel to tell a religious organisation what it should do. It is for the religious organisation to come to that conclusion itself through discussion and prayer. I cannot envisage a time when we would ask any organisation that still did not want to carry out same-sex marriage to do so. The bill has the right balance on freedom of speech and freedom of religion.

“What is also brilliant about the bill is that it allows organisations that wish to allow same-sex marriage the opportunity to do so. It is not right for one religion to tell another religion whether it should be allowed to carry out same-sex marriage. The opt-in system is absolutely right. That permissive system gets it right, and the Scottish Government should be applauded for that.”

196. Tim Hopkins (Equality Network) agreed—

“One thing that has changed in the past 10 years is that a number of religious organisations, including the Quakers in 2009, have decided that they want to conduct same-sex marriages. You asked what things would be like 10 years

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from now. Possibly some of the other churches will have decided in 10 years' time that they want to conduct same-sex marriages. As Colin Macfarlane says, that has to be a decision taken by the churches within the churches. We can rest assured that that is the way that things will go.”

197. He drew a comparison with another other area of anti-discrimination law, that of sex discrimination—

“The laws have now been in place for about 40 years, and discrimination on grounds of sex is not allowed, but it is allowed for religious bodies. The Roman Catholic Church, for example, is allowed to employ only men as priests. Over those 40 years, there have been no moves to try to force the Roman Catholic Church through the courts to employ women as priests. Everybody understands that it is up to each individual church to decide whether or not they want to open up their ministry to women, and those decisions are rightly made within the church.”

198. Ross Wright (Humanist Society Scotland) commented—

“I see it as the endpoint in that the final legal hurdle to equality will have been overcome. Whether other organisations—for example, the churches and so forth—will want to adapt their positions later is up to them. That is their choice.”

Comparison with adoption agencies

199. John Deighan (Bishops’ Conference of Scotland), speaking of a threat in the context in which the Bill was coming in, drew a parallel with adoption by same-sex couples. Referring to the situation whereby initially it was held that adoption agencies would be able to place children with same-sex couples, assurances were given that agencies disagreeing with that approach could operate in their own way and refer same-sex couples to other agencies but, over time, they found themselves compelled to place children with same-sex couples or lose their charitable status, he said—

“I ask the committee not to make the same mistake as their colleagues who told us that we had nothing whatsoever to fear from adoption by same-sex couples—the quote on that is in our submission. The context is that, once you establish criteria, the Equality Act 2010 enforces those on your religion. Our adoption agencies suffered from that. If the bill is passed, we will suffer in the same way when it comes to marriage counselling, marriage preparation, marriage training and so on.”

200. Tim Hopkins (Equality Network) was asked about developments affecting adoption and whether he recognised the resultant concern that, by recognising same-sex marriages celebrated by faith groups, it would then become compulsory for faith groups to celebrate same-sex marriages. He disagreed with the description of the adoption agency situation—

“In 2007, two pieces of legislation were dealt with at the same time. The Scottish Parliament dealt with legislation to allow same-sex couples to apply jointly to be adoptive parents, because that is a devolved matter. What the law says about bodies that provide public services with public money and discriminate on religion, sexual orientation or any other ground is a reserved matter. As such, that issue was dealt with down in London at Westminster, which passed the Equality Act (Sexual Orientation) Regulations 2007.

“Westminster debated carefully the specific issue of adoption agencies and whether it was valid for adoption agencies to simply turn away all same-sex couples. Both Houses of Parliament concluded that they should not do that because adoption agencies use taxpayers’ money to provide services. For example, councils pay adoption agencies to match up prospective adoptive parents with children. Westminster’s view, which I agree with, is that where public services are being supplied and being paid for by public money—we all pay our taxes, whether we are heterosexual, lesbian, gay or bisexual—those public services should be made available to everybody. That is why adoption agencies are required to allow same-sex couples to apply to adopt. There is no right to adopt; anyone who applies is put through a stringent vetting process before they are accepted as adoptive parents.”

201. He pointed out that, in the Stage 3 debate in the Scottish Parliament on the Adoption and Children (Scotland) Bill, in 2006, the Scottish Executive had specifically referred to the fact that it was the UK legislation – then under consideration – that would determine whether adoption agencies could turn away all same-sex couples. He added that the UK legislation on adoption agencies had, after a 20-month period to allow adoption agencies to adjust, come fully into effect at the end of 2008, whilst the Scottish legislation allowing same-sex couples to adopt, he continued, had not come into effect until later—

“… so the rule applying to adoption agencies was already in place before it even became possible in Scotland for same-sex couples to adopt. Things have not changed since that legislation.”

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202. The example of the adoption agencies were raised with Ross Wright (Humanist Society Scotland), with reference to his assertion that the Bill was permissive and that the approach would not be compulsory. Asked whether, given what happened with adoption agencies, the same thing might happen in the context of the Bill, he said—

“My understanding of the situation, although I am not fully aware of it, is the adoption agencies could have stayed open, but that it was their choice to close down rather than treat people equally. No one forced them to close down; their conscience and their choice led them to do so.

“I strongly advocate that people should never be compelled to conduct same-sex marriages. Even the existing law, as far as I read it, says that I am not compelled to marry anyone.”

Balancing the rights of all parties

203. Asked about balancing rights in relation to different protected characteristics, Dr Salah Beltagui (Muslim Council of Scotland) said—

“I have asked this question ever since the equality legislation came in. If you have a conflict between two characteristics, to which do you give preference? It was always said that the decision would be left to case law, but I think that recent case law has given sexual orientation preference over religious practice. Again, that is one of the things that are not clear in the equality legislation. It is very difficult to decide which way the decision will go.”

204. Tim Hopkins (Equality Network) felt that considering whether the Bill provided a balance between equality on grounds of sexual orientation and better equality on grounds of gender identity on one hand and religious freedom on the other was “the wrong way to look at it.” He said—

“It is not a balance of those two things against each other; the bill promotes both at the same time. It increases sexual orientation equality and it increases freedom by allowing religious bodies such as that of John Phillips to conduct same-sex marriage while completely protecting the rights of religious bodies that do not want to conduct same-sex marriages not to do so.”

205. Mark Bevan (Amnesty International) similarly rejected the discourse about rights for different protected characteristics competing with one another—

“The fundamental position of Amnesty International is reflected in something called the Universal Declaration of Human Rights. That it is universal is the

most important thing about it. We would not see a conflict in rights here at all ... [between] our belief that same-sex marriage should be allowed in law and our belief in equality, set against—as some have argued—the opportunity for religious celebrants to refuse to marry ... The freedom to practise a religion does not conflict with the freedom to marry everyone else in the community on an equal basis.\(^{255}\)

**Conclusion**

206. We note stakeholders’ varying views on the approach taken in the Bill towards protecting celebrants of faith and religious organisations’ freedom to conduct legally valid marriages in keeping with their doctrines. We ask the Scottish Government to consider those views in its approach to the amending stages of the Bill.

**REGISTRATION OF CELEBRANTS**

**Belief bodies**

207. Under the Marriage (Scotland) Act 1977, two types of marriage ceremony are possible: ‘civil’ and ‘religious’. Since 2005, the Registrar General for Scotland has temporarily authorised humanists as marriage celebrants under a provision of the 1977 Act designed for the temporary authorisation of religious celebrants. The Bill would set religious and belief celebrants on the same legal footing by redefining non-civil marriage ceremonies as ‘religious and belief’ ceremonies.\(^{256}\)

208. Ephraim Borowski (Scottish Council of Jewish Communities) commented—

“It has been correctly recognised that the humanists feel to some extent compromised by the fact that the current fudge, for want of a better expression, allows them to conduct what are referred to as religious marriages. Humanists want to be able to continue doing what they currently do but not to have it labelled “religious”. That is perfectly acceptable. However, what is proposed will result in the religious aspect of genuinely religious marriage being kind of removed, because religious and belief marriages are left in the same basket. The distinction between them, which is a significant distinction that all my colleagues have founded on at various points in their answers to other questions, disappears. Therefore, we have suggested what looks like a trivial grammatical drafting change—from “religious or belief marriage” to “religious marriage or belief marriage”—because we believe that the distinction still exists and should not be elided in that way.”\(^{257}\)


\(^{256}\) Policy Memorandum, paragraphs 15-17

Scottish Government

209. According to the Policy Memorandum\textsuperscript{258}, when the Scottish Government consulted on marriage law reform prior to introducing the Bill, it proposed introducing ‘belief’ ceremonies as a third category, separate from civil ceremonies and religious ceremonies. The Policy Memorandum goes on to explain that, following the consultation, it was clear that it could—

- in some cases be difficult to determine whether a body was a religious body or a belief body. This suggested that it would be logical to have a religious or belief category
- be confusing to have three categories

Position of the Church of Scotland

210. Ross Wright (Humanist Society Scotland) commented on the Church of Scotland’s “preferential status”\textsuperscript{259} in law—

“… they are the only people who are, as of right, allowed to marry others. Everyone else has to be approved. Of course, that also creates a confusion in the bill in that it has required an additional amendment about deacons. If the church had been included with everyone else in the section in question, it could approve whoever it wanted, but because the Church of Scotland has this special privilege as of right to marry, a separate section relating to deacons has had to be included. Obviously, in giving evidence to an Equal Opportunities Committee, we would advocate that everyone should be treated equally; however, if a church is not established, it does not have the same special privilege.”\textsuperscript{260}

211. The Rev Dr Alan Hamilton (Church of Scotland), however, challenged the view that its treatment in marriage law made it privileged\textsuperscript{261} and commented—

“The Church of Scotland believes that it has a responsible position that is no less than that of any other church. We have a responsibility to all the people of Scotland, regardless of religious belief or sexual orientation. That is where we are. How the state reflects the Church of Scotland’s position in the country’s national life is really up to it, but we do not seek a privileged position.”\textsuperscript{262}

\textsuperscript{258} Policy Memorandum, paragraphs 19-20
\textsuperscript{259} Humanist Society Scotland, written submission
\textsuperscript{261} Scottish Parliament Equal Opportunities Committee. Official Report, 12 September 2013. Col 1457
\textsuperscript{262} Scottish Parliament Equal Opportunities Committee. Official Report, 12 September 2013. Col 1457
Conclusion

212. We note the explanation in the Scottish Government’s Policy Memorandum as to why the Bill maintains two categories of ceremony rather than adding ‘belief’ ceremonies as a separate category. However, we also note the point raised by the Scottish Council of Jewish Communities and seek the Scottish Government’s view on the suggested amendment to the redefinition of non-civil marriages, to more prominently reflect the distinction between religious ceremonies and belief ceremonies.

213. We seek the Scottish Government’s view on the opinion expressed by the Humanist Society Scotland that the treatment in marriage law of the Church of Scotland affords it a privileged status.

CIVIL PARTNERSHIPS

Shortcomings

214. Tim Hopkins (Equality Network) told us that there were “two significant differences” between marriage and civil partnership—

“One is in pension rights, in relation to the survivor’s pension. The other is to do with international recognition. The international recognition regime for civil partnerships is much weaker and is not common across countries that have civil partnerships, whereas it is common for same-sex marriage.”

215. He also described what he termed “practical discrimination” against civil partners—

“People have been quite distressed, for example, when they go to the bank and it does not understand what a civil partnership is or it has a form to fill in that has boxes for marriage but not for civil partnership. That type of thing … is still quite common. We carried out a survey of 103 people in civil partnerships in Scotland, and 58 per cent reported that they had not received the same respect or treatment as married couples for the reasons that I have mentioned.”

Treatment in the Bill of civil partnerships registered abroad

216. The Bill would enable couples who registered a civil partnership in Scotland to change their civil partnership into a marriage, either by having a marriage

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ceremony or via an administrative procedure to be established by the Scottish Ministers under regulations.\textsuperscript{267}

217. Tim Hopkins (Equality Network) raised an “anomaly\textsuperscript{268} in the Bill’s approach to civil partnerships registered abroad, and it relates to the changing of civil partnership into marriage—

“Under the bill, a couple can change their civil partnership into a marriage in two ways. The first is an administrative route … available only for people who registered their civil partnership in Scotland, for obvious reasons, because the registration to be changed is there on the record.

“The other way in which a couple can change their civil partnership to a marriage under the bill is simply to marry in the normal way. At the moment, the bill says that they can do that only if their civil partnership was registered in Scotland. That is causing real problems for a small number of people.”\textsuperscript{269}

218. He gave the example of a couple, one of whom is American and the other is a British citizen, who entered into a civil partnership while living in New Jersey and now live permanently in Scotland—

“They are recognised as being in a civil partnership. They would like to change that to a marriage when the bill is passed. Had they registered their civil partnership here, they would be able to do that, but because their civil partnership is registered in New Jersey, under the bill as it stands they will be unable to get married in Scotland.

“To marry, the couple would first have to dissolve their civil partnership, as that is the only way that they would be able to marry. The problem is that, in order to dissolve the partnership, they would have to show that it had irretrievably broken down: the same rule as for a divorce. Of course, their civil partnership has not broken down, so the only way that they could dissolve it would be to live apart for a year.

“We have, therefore, a couple who are in a civil partnership and want to change it to a marriage, which the bill would allow if they had registered their civil partnership in Scotland. However, because they registered the civil partnership in New Jersey, they would, if they wanted to get married, have to split up for a year …”\textsuperscript{270}

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\textsuperscript{267} Policy Memorandum, paragraph 103-4  
\textsuperscript{268} Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 5 September 2013}. Col 1399  
\textsuperscript{269} Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 5 September 2013}. Col 1399  
\textsuperscript{270} Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 5 September 2013}. Col 1399-1400
\end{flushright}
219. He described the situation as a “nonsense” and said—

“Only a small number of people are affected by that issue, but they are real people who have registered a civil partnership abroad and who, under the bill as it is currently drafted, will in effect be barred from entering a same-sex marriage. We think that a small change should be made to the bill to extend the part that allows people to get married in Scotland if they are already in a civil partnership to cover civil partnerships that are registered anywhere.”

220. James Morton (Scottish Transgender Alliance) added that there would be a particular issue for transgender people in that regard—

“If people are not able to convert their civil partnership that was registered in a foreign country into a marriage, they will not be able to get gender recognition without the state inhumanely forcing them to end their civil partnership, with all the trauma that exists around that. The people who are living in Scotland in a foreign civil partnership would remain the only couples for whom the inhumane divorce requirement would still apply after the bill. That would have a particular discriminatory effect on transgender couples in that situation.”

221. He also raised the prospect of problems with regard to immigration status—

“In order to ensure that people can live in Scotland with their partner, the immigration services would need to be satisfied that they are truly a couple. All the business of having to split up and get back together could easily result in immigration services being less than convinced that everything is above board.”

222. Colin Macfarlane (Stonewall Scotland) commented that there was also the “human factor” relating to the “very fact that two people … in a loving, committed and stable relationship would have to split for a year.” He said—

“That is particularly cruel. Our view is that, although only a small number of people will be affected, they are—as Tim Hopkins said—real people. The bill should be amended, and that could be done very simply. We agree with the principles that Tim has set out.
Scottish Government

223. The point about the difficulty that couples in a foreign civil partnership would have with entering into a same-sex marriage in Scotland without dissolving their partnerships in their home jurisdictions was raised with the Cabinet Secretary. Asked whether the Scottish Government planned to look at that issue again with the passage of the Bill, the Cabinet Secretary explained that, "out of respect for foreign jurisdictions" 277, the Government was "not really inclined" to lodge any amendments on that matter—

"The law in other jurisdictions could cause enormous complications, particularly if it is proposed to dissolve the civil partnership or if it is proposed to dissolve the marriage in some way, if the partnership goes on to a marriage. The law would have to be very complicated if we tried to address those intricacies. It is much more straightforward and would not delay the passage of the bill if we did not lodge any amendments on that. 278

224. The Cabinet Secretary confirmed that civil partnerships registered abroad would be recognised in Scotland 279, that they could be dissolved in Scotland 280 and that polygamist marriages formed in countries where they were legal could also be dissolved in Scotland 281. That being the case, he was pressed on the question why those in a civil partnership performed abroad would have to dissolve the relationship, involving a year’s separation, before they could get married. The answer expanded on the reasons that he had already given—

"When we have looked at what other jurisdictions do in respect of changing overseas civil partnerships to marriages, some of them do and some of them do not. It seems to be the case that Holland and New Zealand would change overseas civil partnerships to marriages whereas Norway and Sweden would not. 282

"In Holland, one must either be resident in Holland or a Dutch national in order to get married there. That is not the case in Scotland. Pretty well anybody can come here and get married. If we introduced a residence requirement for civil partners to change their relationship to marriage in Scotland, that would be unusual in Scots marriage law. It is not impossible, but it would distinguish between most people getting married and people changing their civil partnership to marriage. There might have to be a residence requirement for those people." 283

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225. It was explained that, because of a provision in the UK act, there was probably no need to consider English civil partnerships. A further point, though, related to when the marriage would be deemed to have started—

“In the Scottish bill, we have provision that says that if you change your civil partnership to marriage, the marriage is deemed to have started when you went into the civil partnership. It might be hard for us to do that in respect of the overseas jurisdiction because we do not have the same sort of control over civil partnerships registered in overseas jurisdictions as we do in Scotland.”

226. Asked whether it was something that the Scottish Government would consider in future, the Cabinet Secretary said—

“We will see. Those issues may well be raised during the review—the remit is wide enough to take them on board ... This is not a straightforward process and a lot of consultation and research is needed before we can decide the best way forward. However, there is no reason why the review on civil partnerships could not consider those issues.”

The future of civil partnerships

Extend, maintain or abolish?

227. Brandi Lee Lough Dennell (LGBT Youth Scotland) said that the LGBT national youth council’s concept was to open up marriage and civil partnerships to all couples—

“Bisexual couples and trans people who do not want to pursue a GRC are limited by their birth sex, for instance, to having one sort of relationship or another.”

228. She said that people also saw it as a “matter of equality” that couples could not choose between marriage and civil partnership—

“Some couples would rather have a marriage to recognise their relationship in relation to society and other couples would prefer a civil partnership. For LGBT young people, same-sex marriages as well as mixed-sex civil partnerships are important issues of equality.”

229. It was put to her that, when Sweden and Denmark had legalised same-sex marriage, their equivalents of civil partnership ceased to be available to couples not already in them, in line with a view that civil partnerships were created purely as a compromise to avoid providing equal marriage and had become redundant. In response, Brandi Lee Lough Dennell spoke of a consultation with LGBT young
people in seven youth groups and with two schools on the draft bill, responses to which showed that, if mixed-sex civil partnerships were not introduced, a “sizeable number” of respondents would not have a relationship status that represented their “ideals”.  

230. Dr Kelly Kollman (University of Glasgow) confirmed that many countries had created same-sex unions that were not marriage in a “politically expedient” manner in the late 1990s and early 2000s. She also described “most national LGBT rights groups” as having marriage as their “ultimate goal” and that their argument had “largely been made on equalities issues.” She highlighted, however, a further dimension—

“What sometimes gets lost in the debate is that, if we go back in history and look at the Scandinavian countries, part of what was going on was a pluralisation of family policy. The ways in which people live their intimate lives these days have become much more complex and pluralistic, and there was all this talk about different ways in which the state can define and recognise couples. That is a different argument from the equalities one. 

“In some ways, however, the discussion and debate that we are having about same-sex unions can allow us to look at both issues. If we want to open marriage, that will help to solve the equalities issues between same-sex and different-sex couples, but, in doing so, especially as we have had another, non-marriage type of same-sex union before, we might want to start thinking about the other side of the debate as well—the one about pluralising family policy. If a Parliament opens marriage but then closes off civil partnerships, as they are in this country, it might be going against the second part of the debate, which is about pluralising family policy. I would encourage all Parliaments to think about that second goal as well, as some have done.”

231. Colin Macfarlane (Stonewall Scotland) commented that the Bill’s effect on civil partnerships was as yet unknown and referred to the forthcoming review by the Scottish Government, which he described as a “pragmatic and sensible” policy decision—

“…we should wait for the Scottish Government’s review and we look forward to seeing what it produces.”

232. Tim Hopkins also welcomed the Scottish Government’s review—

“We think it important that that review start soon. It has taken two years to get to the bill from when the consultation on same-sex marriage started. We very
much hope that in two years some of us might be back here talking about legislation that would open up civil partnership to couples of any gender."

233. Referring to the point about Sweden and Denmark’s abolishing of civil partnerships for couples not already in them when same-sex marriage was introduced, he recognised that it was “one way to go” but said that some other countries, “including France, Belgium, the Netherlands, New Zealand and South Africa”, had chosen to retain civil partnerships alongside marriage when marriage was opened to same-sex couples. However, Dr Kelly Kollman confirmed that the registered partnership schemes available in those countries were not all comparable with UK civil partnerships—

“They differ quite a bit. The scheme in the Netherlands is relatively comprehensive in terms of the rights that it gave to different sex non-married couples and same-sex registered partnerships. The French PACS is much less comprehensive. It is easier to get into and to get out of and does not include a lot of the benefits, duties and obligations that are associated with civil marriage in France.”

234. Tim Hopkins stated a preference for the Dutch model—

“In the Netherlands, the situation is quite similar to what we would like to see here: civil partnership and marriage are both available and have similar legal effects, but they are different and they are seen to be different. If you look at the stats in the Netherlands, about one quarter of same-sex couples choose civil partnership rather than marriage and three quarters choose marriage. About 90 per cent of mixed-sex couples choose marriage but 10 per cent choose civil partnership.

“Our surveys of LGBT people in this country have found similar proportions for same-sex couples.”

235. For Tim Hopkins, the point was to “maximise choices for everybody” and he said—

“Ideally, we would have liked to see mixed-sex civil partnership in the bill, but there is a lot in the bill already and there needs to be consultation and discussion about the future of civil partnership. Should it be opened up to all couples, regardless of gender, or should it be got rid of, as happened in Sweden?”
Scope for legal challenge

236. Asked whether maintaining civil partnerships for same-sex couples only might be subject to a legal challenge with merit, Aidan O’Neill QC argued that it would not, because an opposite-sex civil partnership would be no different from an opposite-sex marriage—

“The name is different, but the legal consequences are exactly the same.”

237. Although she pointed out that the legal consequences were “not quite the same”, particularly for couples who had been together for a long time, because of a “significant exclusion” in relation to pension benefits, Karon Monaghan QC agreed that any challenge would be “unlikely to succeed”. She said—

“… because there is, for an opposite-sex couple, no material distinction between a marriage and a civil partnership—that is, they can marry and get all their pension benefits—I think that the courts would say that this is an area where the legislature has some margin of discretion.”

Scottish Government

238. Asked for indication of a timeframe for the forthcoming review of civil partnerships, the Cabinet Secretary answered that he hoped for it to be done “reasonably speedily” and said—

“I have not put a deadline on it because it would make sense that our review, which has started—we have published the remit—is not totally completed until we see the conclusions and recommendations from the UK Government’s review. That is because many of the issues that will inform both reviews are reserved matters, particularly pensions and the like. It would therefore be sensible for our review to have the opportunity to study the recommendations and conclusions from the UK review in consultation with Maria Miller, the culture secretary and lead minister for the issue in the UK Cabinet. I have agreed with her that we want to try and get the review done and dusted reasonably quickly. We need to do it properly. It will be into 2014, but the sooner it is done the better.”

239. Asked whether the Scottish Government was minded one way or the other on the possibility of opening up civil partnerships to mixed-sex couples, he said—

“The Government has no policy on that. We will wait and see what the review says and then decide what our policy should be.”\(^{305}\)

240. In relation to the case currently before the European Court of four mixed-sex couples seeking the right to enter into civil partnerships, the Cabinet Secretary said—

“We will wait to hear what the court says about that particular case and, if it requires us to take any action, we will consider that. Given that the issue is before the courts in Europe, it would be appropriate for us to wait to see what the court says.”\(^{306}\)

241. It was put to the Cabinet Secretary that, in the context of the current challenge in the European Court, the Bill could be seen as discriminating against mixed-sex couples. In response, the Cabinet Secretary disputed the premise that the Bill could be seen as discriminating against mixed-sex couples—

“We absolutely do not accept that interpretation of either our law or the ECHR … The Scottish Government’s very clear position is that the bill does not contravene the rights of mixed-sex couples.”\(^{307}\)

242. He said that, as the people in question could get married, the Scottish Government saw “no need”\(^{308}\) to amend the Bill. Nevertheless, he set out more detail on the matter—

“Clearly, we would need to reach agreement with the UK Government on a number of the reserved matters in relation to opposite-sex civil partnerships. When we have looked at the issue in the past, one of the big questions has been this: if you could enter into an opposite-sex civil partnership in Scotland, what would be your rights and responsibilities with regard to reserved matters both in Scotland and if you travelled outside Scotland? For example, there is no guarantee that, if you entered into an opposite-sex civil partnership with someone from overseas, you would be able to bring your partner into the country, because there is no guarantee that the UK Government would recognise the partnership for immigration purposes as it would recognise, say, a same-sex civil partner or a married person. There are also social security and, as the cabinet secretary mentioned, pensions issues to take into account, and we would very much have to work with the UK Government on the implications for reserved as well as devolved matters. Otherwise, couples could enter into mixed-sex civil partnerships thinking that they have full rights and responsibilities when, in fact, they could have quite limited


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rights and responsibilities, unless, as the cabinet secretary has made clear, the reserved matters followed.”

243. The Cabinet Secretary added that covering opposite-sex civil partnerships in the Bill would have made it “much more complicated” and would have had “a lot of ramifications”. He continued—

“… not moving in concert with our colleagues south of the border could cause a lot of problems instead of solving them. Our view is that the sensible course of action on this issue is for us to take our time and work with our colleagues south of the border and, hopefully, by some time next year, we will be very cognisant of all the challenges that might arise from that particular change in the legislation. A decision will then have to be made both south and north of the border on whether we go ahead with any recommendations that result from the two reviews.”

244. He was also asked whether the review would address the situation whereby a couple in a civil partnership would have to dissolve the partnership if one of them transitioned gender. He replied—

“The review’s remit is wide enough that it can look at such issues. I suspect that that issue will feature in the evidence that is given to the review.”

245. In relation to devolved powers on pension policy regarding certain public sector schemes, the Cabinet Secretary was asked why the Scottish Government planned to treat same-sex spouses in the same way as civil partners for the pension schemes under its responsibility. He said—

“Irrespective of the provisions in the bill, the policy of the Scottish Government, where we have devolved responsibility, is, as far as possible, to have a pensions policy that is compatible with the general principles of pensions policy throughout the UK. To do otherwise would result in many potential anomalies and difficulties. That is our general approach.

“However, a review is being undertaken by the UK Government of occupational pensions in particular. We reckon that that will report in about July next year. Once we see the results of that review, we can discuss the issue with our colleagues south of the border ... We are very conscious of the issue. We have an open mind about it and we think that the sensible thing to do would be to await the review of occupational pensions by the UK Government because it will give us a clear indication of the best way forward in this area.”

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Conclusion

246. We note that the Scottish Government plans to consider issues relating to reform of civil partnerships, including opposite-sex civil partnerships, in its forthcoming review.

247. We note that the Bill creates a requirement that those same-sex couples who have entered into a civil partnership in another country must dissolve their partnership before being permitted to marry in Scotland. We believe that if same-sex marriage is introduced, these couples should have similar access to the proposed administrative procedure for conversion of civil partnership to marriage as couples whose civil partnerships were conducted in Scotland.

CHANGE OF GENDER OF MARRIED PERSONS OR CIVIL PARTNERS

248. The Gender Recognition Act 2004 (“the GRA”) empowers the Gender Recognition Panel to issue a gender recognition certificate (“GRC”) to a person meeting certain criteria. Under the GRA, once a full GRC is issued, the person’s gender becomes for all purposes the acquired gender. The GRA currently provides that, where successful applicants to the Panel are married or in civil partnerships, the Panel should issue the applicant with an interim GRC. With interim GRCs, applicants do not change gender but are able to divorce or to dissolve civil partnerships, after which full GRCs are issued. The Bill would enable couples who married in Scotland or entered into a civil partnership in Scotland to stay together throughout the transition and acquisition of the new gender.\footnote{Scottish Government, Policy Memorandum, paragraphs 110-12}

Removing the requirement to end marriages and civil partnerships

249. Tim Hopkins (Equality Network) described the current situation as a “very important area of legal discrimination” affecting transgender people—

“Because we have a segregated system of marriage and civil partnership, if someone changes their legal sex because they are transsexual, they have to end their marriage and start a civil partnership. That causes all sorts of difficulties for people.”\footnote{Scottish Parliament Equal Opportunities Committee. Official Report, 5 September 2013. Col 1383}

250. The Humanist Society Scotland “strongly” supported that view.\footnote{Humanist Society Scotland, written submission}

Gender-neutral ceremonies

251. James Morton (Scottish Transgender Alliance) explained that somebody’s legal gender in one country does not automatically get recognised in other countries—

“You can have a situation in which a transgender woman who has gone through gender reassignment from male to female and has been fully legally
recognised in her home country—say, America—is not recognised as female in Scotland, where she would still be legally male in the eyes of UK law. If she saw herself as lesbian and had a female partner and wanted to get married in Scotland, the bill as it stands would require her to declare in front of all the wedding guests that she was the husband. Obviously, that would be a gross violation of dignity and privacy and would cause humiliation and embarrassment on what should be a happy and special day.”

252. He said that all that would be required to avoid those violations of dignity and privacy would be to allow the option, when the couple and the celebrant agree, to use gender-neutral language such as “We pronounce you married” rather than “You are now husband and wife”. He continued—

“We completely respect the fact that some religions might want to continue always to use the gendered terms “husband” and “wife”—that is fine—but we want religions such as the Quakers and the Unitarians, in addition to the Humanists, to have the option of respecting privacy and dignity and allowing gender-neutral language when somebody is technically entering a mixed-sex marriage but does not perceive themselves as being the gender that is on their legal status.”

Scottish Government

253. The Cabinet Secretary said that he thought that the Scottish Government had “probably struck the right balance” regarding gender-neutral ceremonies but recognised the sensitivity of the issue. He continued—

“As I understand it, the proposal is that both the denomination and the couple would have to agree to use the gender-neutral declaration. There might be further detail added to the arrangements for the ceremonies. I would not rule out change on that altogether ... However, I am concerned about the complexity. Any further changes to the bill in this respect would require a great deal of thought. It is not so much about the amendment or amendments that might come forward; it is about the implications and unintended consequences of any potential amendments. We would welcome comments from the committee, but it is an area that we would be quite cautious about, simply because it is particularly complex and I do not want to end up with unintended consequences, particularly if they damage the people whom we are trying to support to move forward.”

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254. It was added that the Government would also want to make certain that no problems would be caused for denominations that might not want to use a gender-neutral marriage declaration when marrying an opposite-sex couple.\textsuperscript{324}

**Spousal consent**

255. James Morton (Scottish Transgender Alliance) set out a case for an amendment to the Bill to remove the ability of a spouse to obstruct his or her partner’s gender recognition—

“The European Court of Human Rights has recognised that for someone to have their gender identity legally recognised and respected by their Government is a human right. That is a very personal issue and is not something that another person should be able to block.”\textsuperscript{325}

256. He added that a balance needed to be struck—

“We feel that it is disproportionate to allow a spouse to block the whole gender recognition of their partner, but we recognise that some spouses might feel very strongly that they want the marriage to continue to be seen in the original way and to have the marriage certificate only in the original way as it was originally solemnised.

“Our proposed amendment would allow the transgender spouse to receive their gender recognition while remaining married, but without their partner’s consent the marriage would not be re-registered to show the new details. The bill regards a marriage between a trans person and a non-trans person that happens before someone’s gender recognition as a protected marriage. There is therefore no change to the pension rights, parental rights or any aspect of the marriage because the gender recognition of one party is granted. It is recognised that when the marriage was entered into, it was a mixed-sex marriage.”\textsuperscript{326}
257. James Morton explained that, for the Scottish Transgender Alliance, the proposed amendment would enable a balance between the rights to gender recognition for the trans person, which is their individual human right, and the rights of the non-trans spouse to avoid being given a marriage certificate that reflects new details. Indeed, he argued that the proposed amendment would provide better protection for spouses who do not wish to divorce their transgender partner—

“They might be against divorce—perhaps for religious reasons—and not want to have any change noted on their marriage certificate, because they feel strongly that how it was originally solemnised is what counts.”

258. He added that the amendment would not remove any rights for people to divorce their transgender partners and recognised that transition could be quite an arduous process for people, both bureaucratically and emotionally—

“We recognise that it can be profoundly difficult for a spouse to come to terms with their partner’s transition. That is another reason why we think that access to gender recognition should be separated from the issue of whether they continue their marriage. Sometimes, it can take a number of years for people to feel more at ease with the experience and they may want to wait and see how they feel rather than have to make a vast decision in order to allow their partner gender recognition.”

Scottish Government
259. Asked whether he saw any merit in requiring a declaration of spousal consent to continue with the issuing of a GRC, the Cabinet Secretary recognised the concerns but said that it was a “difficult issue” for the Scottish Government—

“The first point to stress is that spousal consent is not required to obtain a new gender; consent is required to stay in the marriage when a new gender is acquired. Both parties must be willing to stay in the marriage. In the bill, we have recognised the specific concern that some non-transitioning spouses may not wish to be in a same-sex marriage after their spouse obtains gender recognition. The point has been made that the non-transitioning spouse has at least two years to take action, given that the transitioning spouse must live in the acquired gender for two years before applying to the gender recognition panel. However, it may be the application to the panel that makes a non-transitioning spouse consider his or her options. This is quite a complicated area, but we have been listening to the concerns and we believe that we are addressing them.”

260. Asked whether the provision in the Bill allowing a person to continue to receive a gender recognition certificate if their spouse died before the application
was complete covered all eventualities, the Cabinet Secretary said that he was aware of the issue and was willing to take any comments “seriously”.

**Long-term transitioned people**

261. James Morton (Scottish Transgender Alliance) told us that, under the GRA, there had initially been a two-year period allowing people who had transitioned more than six years previously to have their gender recognised without having to provide the same level of medical evidence as others. He explained why such an arrangement was important—

“The standard route requires that a person provide not only a letter from their GP detailing what medical treatment they have had for gender reassignment, but a letter from a gender specialist evidencing exactly how they were diagnosed. They can access such a letter only while they are still in touch with that gender specialist, and if someone has been transitioned for more than six years they will be out of the system and will no longer be attending a gender identity clinic. Therefore, they will have to try to re-enter the system, in which it currently takes between one and two years to get a first appointment.”

262. He added that they would also be taking up a space that could otherwise go to somebody in greater need simply in order to get rediagnosed for the purposes of proof for the gender recognition panel. He went on to set out the solution put forward by the Scottish Transgender Alliance—

“We propose that the long-term transitions route be reopened in recognition of the fact that some people could not access it the first time round because they did not want to divorce or because they disagreed with the discriminatory requirement for other people to divorce and felt that, on principle, they should not take advantage of a system that their fellow trans people could not access. We feel that that would be of benefit not only to transgender people but to the gender recognition panel because, when there is a difficulty in gathering evidence, that makes the process of trying to help an individual to get through the gender recognition process more time consuming for the panel. We feel that it would be to the benefit of all to reinstate that option and to require people who have been transitioned for more than six years to provide only a GP letter evidencing their medical treatment, to enable them to have their gender recognised on that ground.”

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263. Asked for clarification as to whether that process should be put in place for people eligible for it originally or reopened retrospectively for all people, he said—

“We think that it would be best simply to reopen the route and not try to define exactly who would be eligible for it. The UK Government has tried to effect a restricted opening of it, but it seems not to have got the grouping quite right. It is hard to select exactly the right people, and we think that there are other reasons why people might need to use the long-term transitions route. For example, if they live in a rural Highland area they might not yet even have heard of the Gender Recognition Act 2004. It can take a long time for people who have been long-term transitioned and are no longer in contact with any transgender groups—people who are now just living their lives—to find out about their rights and be able to access things. We feel that it would be fairest simply to open the route for anybody who has been transitioned for more than six years.”

Scottish Government

264. The evidence requirements and the difficulties that people who were long-term transitioned could have in meeting those requirements, were raised in the evidence session with the Cabinet Secretary. His answer explained that the Bill was very similar to the UK act in this area—

“That is deliberate because, given that the gender recognition panel operates on a UK basis, we wanted to stay as far as possible in line with the way that it operates. After speaking to us, the UK Government decided to amend its bill at quite a late stage to introduce what is sometimes called a fast track for long-term transitioned people who possibly cannot get the full range of medical evidence. Obviously, the UK act relates to people who could not use the original fast track under the Gender Recognition Act 2004 when it was brought forward because they did not want to end their marriage. We think that we might lodge an amendment at stage 2 along similar lines to what is already in the UK act to try to address that issue.

“We will have some detailed discussions with the Equality Network and the Scottish Transgender Alliance, because we have seen what they have proposed in this area. We will also speak to the UK Government and the gender recognition panel, given that the panel operates on a UK basis. In principle, we think that there is scope to introduce an amendment at stage 2.”

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Lowering the age requirement

265. Asked about the current requirement that a person be at least 18 years to secure a gender recognition certificate, James Morton (Scottish Transgender Alliance) said—

“Transgender people aged 16 or 17 will remain discriminated against under the bill as drafted: because they are unable to legally change their gender, they will be unable to access a marriage or civil partnership as they identify.”

266. He argued that making the age at which someone could obtain a gender recognition certificate equal to the age at which they could “undertake the life-changing decision to marry and found a family” would not “in any way” encourage more people to transition or encourage people to transition at a younger age—

“After all, this is not about the start point of a transition but about recognising the end point; it is not about access to medical treatment but about recognising the small but significant number of transgender people whose identity as the other gender is so profound and so known to them from a young age that with parental support they have been living in the other gender throughout their teenage years. Only with parental support could they have changed their school and NHS records and their name and therefore be able to evidence their readiness for a gender recognition certificate at the age of 16.”

267. He described how, without the GRC, those people would, for example, be unable to get married in the church that they wished to get married in—

“… although the Church of Scotland regularly marries transgender people and their spouses, the minister in question might not perform same-sex marriages. As a result, 16 and 17-year-old transgender people are being discriminated against.”

268. James Morton also refuted that the proposal, which would “enable people to make various decisions about their lives at the age at which Scotland recognises their legal capacity to do so” – i.e. at 16 – was controversial.

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269. Brandi Lee Lough Dennell (LGBT Youth Scotland) said that young people were aware of their gender identity “far earlier”—342 than they were of their sexual orientation—

“We work with a number of trans young people who began their transition long before the age of 16. When we consulted the trans young people in our service, we found that a large number of them were very upset by the fact that at 16 they could leave education, get a job or get married but could not legally have their gender recognised. For them, there was a very large disconnect in that respect. In fact, on this very issue, a young person told us:

‘I’m currently 17 and am going away to college next year. I would much prefer to have myself as male on the official records, but they need to have my ‘real’ details on the system.’

“In our consultation, we also asked young people whether the age at which they could get a GRC, which is 18 at the moment, had stopped any of them from entering into a marriage, and several young people told us that they had delayed marriage in order to receive their GRC. If the bill as drafted is passed, someone who enters into a marriage when they are 16 would have to wait until 18 to get their GRC and then would have to re-register their marriage afterwards. If the bill does not pass, they will not have the option.”343

270. Asked whether there was an issue in terms of less favourable treatment in respect of transgender young people who, although currently able to live in the acquisition gender, were unable to obtain formal recognition of that—i.e. a GRC—until the age of 18, whereas a non-transgender young person could marry at the age of 16, Karon Monaghan QC said that there “probably” was—

“… the position would require justification. Certainly, there would be potential for that to be the subject of a discrimination claim. The issue of whether it be justified would depend on issues such as whether transgenderism is something that takes a level of maturity on the part of an individual to be clear about, such as they might be expected to attain by the age of 18. I do not know the answer to that question. However, potentially, it could violate the convention—article 8, for example—and it would require justification if it were to be lawful.”344

271. Lynn Welsh (Equality and Human Rights Commission) agreed with that position.345

Scottish Government

272. The Cabinet Secretary was asked why the minimum age for applying to the gender recognition panel was 18 when the age of consent for marriage and sexual activity was 16. He described the point as a “serious issue” and responded—

“Before a person may apply to the gender recognition panel, they must produce evidence that they have lived full time and exclusively in their acquired gender for a minimum of two years. That alone suggests a gap between 16 and 18.”

273. He went on to state that the age for applications was set at 18 in the GRA to reflect the fact that people are expected to live for two years in their acquired gender—

“Most adolescents can be expected to have reached sexual maturity at the age of 16, which is also the age of consent to sexual intercourse. Some people mature more quickly than others, but it might be difficult to vary the age limit from case to case.”

274. Moreover, he argued, if the age limit were lowered generally, “practical concerns” would arise about how a child between the ages of 14 and 16 would show that they had lived “full time and exclusively in their acquired gender,” as the panel looked at documents such as driving licences, household bills and passports with a person’s gender-appropriate name on. He continued—

“We would need strong medical evidence to support any change in the age limit and before we could agree to any moves to lower the limit. I would be extremely reluctant to lower the limit, for the reasons that I have outlined.”

275. It was put to the Cabinet Secretary that an individual could have lived in the acquired gender for two years before turning 16 and that confirmation of that could be obtained from the individual’s school or from a general practitioner, who could also confirm what medication they were on. He recognised that, “theoretically”, that was possible, but said—

“… we have to be quite cautious about how we move forward on the issue … As a Government and in the bill, we have shown that we are keen to ensure that transgender people have all the rights that they should have, but I think that we have to strike a balance here, because there are issues to do with the maturity of people of that age and, in particular, the ability of people who are aged between 14 and 16 to show that they have been living in that way. I take quite a cautious view … it would take a fair bit of persuading for me to decide that the bill needed to be changed in that regard … [and] we did not

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consult on the matter, so I think that it would raise issues if we amended to 16 the age for applying to the gender recognition panel.”

276. Asked whether he recognised that there were public bodies involved in recognising the lifestyle choice that people from the age of 12 and upwards had made, the Cabinet Secretary said that he did—

“You mentioned the age of 12. Should we pick 12, 14, 16 or 18? This is an area in which I am being quite cautious, because the law will apply to everyone. If we allowed waivers for different age groups or variations in what is allowed, we would end up in an extremely complex situation. If we went down that road, we would end up with a bill that was almost unmanageable. I think that it is necessary to choose between 16 and 18. For the reasons that I have outlined, our view is that 18 is appropriate, although we will listen to what the committee has to say. However, it should be borne in mind that we have not consulted on the issue.”

277. The Cabinet Secretary was questioned further about the suggestion that, by not allowing a 16-year-old transgender person to marry when a non-transgender person can marry at that age, there may be grounds for a human rights challenge on the basis of less favourable treatment in law. He replied—

“Everything in the bill has been human rights law proofed. We do not believe that any aspect of the bill would be open to a successful human rights challenge. However, if the committee feels strongly that we have not got things right, we will listen to what it has to say. I admit that I am being cautious on the issue—for good reason, I think—but if the committee suggests an alternative, we will take it seriously.”

278. It was added that the situation in Scotland and in the UK more generally was “broadly in line with the position in other jurisdictions”.

Conclusion

279. We note the Scottish Government’s position that it has struck the right balance regarding gender-neutral ceremonies, and that allowing such ceremonies could cause problems for denominations that might not want to use a gender-neutral marriage declaration when marrying an opposite-sex couple. However, we believe that it should be possible to allow a choice of gender-neutral or gender-specific language for marriage declarations and call on the Scottish Government to reconsider its position.

280. We note evidence calling for the requirement for spousal consent to be removed from the gender recognition process. We accept the Scottish Government’s view that, whilst the non-transitioning spouse has at least two years to take action, it may be the application to the panel that makes a non-transitioning spouse consider his or her options. We realise that spouses of

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people seeking gender recognition may find themselves in circumstances that are very difficult to face and that we have not received evidence from their perspective. However, we believe that the non-transitioning spouse’s personal choice is sufficiently protected by the automatic grounds for divorce triggered by his or her partner’s seeking gender recognition. We therefore believe the requirement for spousal consent for gender recognition is unnecessary and should be removed.

281. We draw two further conclusions regarding gender recognition issues raised in evidence, whilst recognising that it may not be possible to deal with them effectively within the scope of this Bill—

- Regarding the difficulties facing long-termed transitioned people, we welcome the Scottish Government’s willingness to consult relevant stakeholders further with a view to lodging an amendment at Stage 2.

- We note the representations made to us about lowering the age requirement. We do not consider that we have received sufficiently comprehensive evidence in this area and ask the Scottish Government to provide, in advance of Stage 2, a detailed response on the issue.

IMPACT ON OTHER AREAS OF LIFE

Education

Impact in the classroom

282. Stephen McCrossan (Educational Institute of Scotland) was asked whether the Bill would have an impact on how teachers taught in the classroom. He replied—

“I do not think that the bill will have a significant impact on the way in which teachers teach in the classroom. We simply see the bill as another strand in equality and diversity, promoting equal opportunities and challenging discrimination. I do not think that it will make a significant difference to classroom practices and how teachers teach in the classroom.  

283. He accepted that teachers might have personal views either for or against same-sex marriage but pointed out that they adhere to a code of professionalism and conduct through the General Teaching Council for Scotland—

“Their role in the classroom is clearly defined as non-judgmental. The responsibility and onus would therefore be on the teacher to devise appropriate classroom activities to allow the children and young people to look at and explore the issues in the bill on their own and make up their own

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minds about it. Essentially, it is the responsibility of the teacher to be inclusive and non-judgmental in how they operate in the classroom."

284. He told us that teachers were often asked what their own views were but, in his experience, they set down the parameters with the class at the beginning of the year on what was expected in the classroom—

"The teacher’s views and opinions would certainly not matter; it is all about the children exploring and expressing their own views. That would be established as a basic classroom rule."

285. Responding to a suggestion that, on issues like this, a teacher’s interaction with, for instance, a primary 4 class would be quite different from that with a secondary 4 class, where there would be more of a discussion, he said—

"I have no experience of the primary sector, but I can say that classroom practice and teaching methodologies have opened up as a result of curriculum for excellence, and teachers are now being encouraged to explore and use many more new teaching methodologies such as collaborative learning, the use of information and communication technologies for research purposes, active learning and peer learning. People’s views of traditional teaching approaches have changed and teachers are now being encouraged to pick and choose from the approaches that I mentioned, depending on their audience."

286. Cara Spence (LGBT Scotland Challenging Homophobia Togethers Schools Project) felt that the issue was not necessarily as controversial as people perceived it to be—

"LGBT Scotland has just completed a three-year project in which we worked with more than 9,000 pupils in 47 schools across Scotland and trained 350 school staff. There is a fear that this is a controversial issue and that teachers hear such language they get alarmed. However, when you unpick the issue and show that it is okay to talk about, say, love, bullying and anti-bullying approaches, teachers are okay with it. Our work with teachers was fantastic and positive; those teachers are leading the way in Scotland and particularly think that issues such as prejudice-based bullying need to be challenged in schools."

287. John Brown (Catholic Education Commission), however, felt that a “strongly controversial” aspect of the Bill was its “redefinition of marriage” which, he

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said, would “come into conflict with the belief held in Catholic schools and by the Catholic church about the sanctity and dignity of marriage as being between a man and a woman”. According to John Brown, teaching in those schools would have to represent marriage according to that religious stance and sought an assurance that it would not “change or challenge the faith curriculum in Catholic schools”. He outlined a specific concern—

“In a Catholic school, we would be teaching the idea of marriage as being between a man and a woman. That is the sacramental element in a Catholic school. That does not prevent me from stating that some people live different lifestyles and deserve respect for that. My worry is that if a teacher says in a classroom that they do not believe something to be marriage in the sense that we understand marriage, they could be liable to be attacked or taken to court because they are seen to be against something that the state has promulgated. Therefore, we need some sort of legal protection in the bill so that we can say what we believe within the Catholic understanding of marriage and we are not prevented from saying that some people go through a form of ceremony that they call marriage but is not marriage in our view.”

288. Michael Calwell (Family Education Trust) also spoke of a conflict, between two “normative views of marriage”, which he characterised as, on one hand, a “purposeful sexual union of a man and a woman … vital to human society” and, on the other, a “radical, new vision of marriage … invented by a pretty small political class in a very small corner of the world in the past few years”. He said—

“We must decide which of those two conflicting understandings of the human institution of marriage we teach to children. We would say that the bill should not proceed at all. However, should it proceed, the decision on which of those conflicting views of marriage is taught to children would have to be made by parents because, in any free society, they are ultimately the people who are responsible for raising and educating their children and they have a basic right to have their ontological, philosophical and religious views communicated to their children.”

289. Asked why a school would have to take one side or the other, rather than have teachers explain, similar to an issue like abortion, that some people agreed with it and others disagreed with it, Michael Calwell said—

“With older children—in the teenage years, for example—we could probably tease out some of the political and ideological concepts that have gone into the bill. We could talk about gender theory, critical theory and all the ideologies that have driven the bill and then juxtapose the vision of marriage that is contained in the bill with what the human family understands the nature and purpose of marriage to be. Therefore, we could teach it in the context of a wider political and ideological conflict that is going on in this part of the world at this point in time.

“However, when it comes to small children, who really cannot digest all that complexity, the people who must decide what marriage is—what its basic meaning and purpose are—and what they want to communicate to their children about that must be the parents. We emphasise the primacy of parental sovereignty in the debate.”

290. Ruth Hunt (Stonewell/Stonewall Scotland Education Champions Programme) disagreed, feeling that there was a “fundamental misunderstanding at the heart of the debate”, namely the assumption that the law was based on people’s individual belief and faith rather than on what the nation needed. She set out the Stonewall experience of how teachers could present their own views without coming into conflict with the law—

“Faith schools that work with Stonewall Scotland and those that choose not to but still take the issue seriously are clear that teachers are able to present their views and beliefs in a respectful and dignified way while still teaching truth. People in every faith community and those of no faith would agree that all children need to be taught the truth. Children under 11 do not need Michael Caldwell’s analysis of Foucault’s changing nature of gender variance. They need to know that different couples love each other and that love and relationships are important.

“Providing age-appropriate materials and ways of describing that is exactly how good faith schools work. The faith schools with which we work say that homophobic bullying is not fair, not right and not Christian and that they strongly believe in that. They also say that some people believe that same-sex couples should be able to get married and some do not because they believe that marriage should only be between a man and a woman. Children, regardless of their level of sophisticated understanding, are able to grasp that concept easily.”

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291. She argued that it was possible to present different notions of faith without telling “lies” and set her argument in the context of current, existing law—

“The truth at the moment is that opposite-sex couples can get married in a religious premises or in a registry office. Some people do not have any religion when they get married, but that is okay. Some gay people can enter into something called a civil partnership. Those are facts—factual pieces of information. The teacher can then say, for example, ‘I don’t believe that gay people should be allowed to have a civil partnership. That’s because I believe that relationships should only be sanctioned by the state when they are within a construct of faith.’ You know, you can have that conversation while presenting the truth.

“When the bill is passed, the teacher could say, ‘Some gay people get married; some don’t. Some heterosexual people get married; some don’t. I believe that gay people shouldn’t get married.’ That is not an impossible position to occupy within a school environment.”

292. She disagreed with suggestions that the Bill would “force” teachers into a position where they could not say that they did not believe that same-sex marriage was a good thing—

“The reality is that good teachers, including good Catholic teachers, frequently manage their beliefs in juxtaposition with the curriculum that they are teaching. I remember a very good lesson in my Catholic secondary school, in which we were taught about evolution but the teacher began by saying, ‘I do not believe in evolution. This is my personal belief, but I will now teach you.’ As a pupil, that was a fascinating insight into the different ways of seeing the world, but the lesson also enabled me to pass my physics GCSE. These things are not contradictory.”

293. Pressed to explain on what grounds she believed that teachers would be able to manage the juxtaposition between their beliefs, those of their schools’ denominations and the law—and if, for example, there was a specific legal protection, Ruth Hunt maintained that it was what happened already—

“This legislation will not make any difference to how teachers in faith schools and indeed non-faith schools—after all, this is not just an issue in faith schools—are already managing these issues. Teachers hold a range of beliefs about a range of different issues, but the fact is that they know that they need to teach things so that kids can pass their exams; so that they can live, work, socialise and pray in a modern society when they leave school; and so that they are equipped to work and to manage in society. Teachers

want to ensure that young people respect their neighbours, their colleagues and the people they are going to work with. Of course, that does not preclude them from expressing a belief; indeed, young people are very interested in the range of beliefs that people hold on issues. There is no way—in fact, it is physically impossible—to say to a teacher, ‘You have to draw a line and not say what you believe here and teach only the facts there.’

294. She added that, were this a new issue or concern, she would be “less confident” in her answer—

“... but the reality is that teachers navigate a fine line all the time about issues relating to contraception, genetics and modern crop rotation. We constantly battle with ethical issues of interest and issues that involve holding conflicting beliefs and teaching the facts. Good teachers are very well equipped to deal with that.”

295. Stephen McCrossan said that the EIS’s view was that the system already worked—

“Normally, if a teacher has difficulties with the teaching resources that he or she is expected to use in the classroom, their professionalism allows them to flag up their difficulty with the particular topic and local arrangements come into play in the school. As the Government has pointed out, teachers have a responsibility through their professionalism, but employers also have a responsibility under the public sector equality duty to respect the beliefs of the individual teacher.”

296. According to Stephen McCrossan, he and his colleagues had not come across any cases at national level in which disciplinary procedures had been applied to teachers who had said that using certain materials went against their beliefs—

“... which indicates that such issues are either being dealt with at local level, or they simply do not happen.”

Dealing with bullying

297. Cara Spence (LGBT Scotland Challenging Homophobia Together Schools Project) was asked whether leadership that came from the classroom reduced bullying. In her answer, she emphasised the welfare of children and young people—

“At the end of the day, we know that lesbian, gay, bisexual and transgender young people are in classrooms across Scotland. They tell us that if teachers

said negative things about same-sex relationships, or said that same-sex relations are harmful or not equal to heterosexual relationships, they would find that damaging and hurtful. That is the most important thing."382

298. She described considering the welfare of children and young people as "paramount"383 in a teacher’s role—

"… it is not secondary to their beliefs or views. Before a teacher makes a statement in the classroom, they should consider whether it might have a damaging effect on a pupil in that classroom. Teaching should not be biased; it needs to be factual. If the bill is passed, the legislation will be fact. There is no need for teachers to state negative opinions in the classroom in relation to the legislation."384

299. Responding to the same question, Chief Superintendent Grant Manders (Police Scotland) said that he had been in the police for 26 years and could not remember any instances of bullying that had been precipitated by what a teacher had said in the classroom. He said that it was "more of a peer issue in the playground" than something that began in the classroom.385

300. Relating the incidence of bullying to the introduction of civil partnerships and the prospect of same-sex marriage, Ruth Hunt (Stonewell/Stonewall Scotland Education Champions Programme) said—

"Civil partnerships brought us up a gear. We heard a lot from young people who had attended a civil partnership ceremony and then talked about them in school, and we think that civil partnerships created an environment in which these matters could be talked about in an easily understood way."386

301. However, she continued, civil partnerships had not completely eradicated homophobia in schools—

"… 50 per cent of young lesbian, gay and bisexual people still experience bullying—and the sense of otherness that comes from having two separate systems is incredibly damaging to gay people’s sense of self and how that is described in schools. We thought that the situation would be better than that and that things would move more quickly, but that has not happened."387

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302. Whilst she recognised that same-sex marriage would “absolutely … not end homophobic bullying”\(^{388}\), she put forward the view that it would have a “transformative effect on Scottish society”\(^{389}\). She reasoned that in other countries, people began to “stop worrying quite so much about equal marriage”\(^{390}\) when it was introduced and that that would also be the case in Scotland—

“Indeed, there has already been some movement and relaxation from the Church of England and the Pope on these matters. It is perhaps not as important an issue as child poverty and some of the other major issues that faith communities are concerned about.”\(^{391}\)

303. Pointing out that not all faith communities shared the same views on the issue, with many gay and heterosexual people of faith seeing marriage as a “good endorsement of good relationships”\(^{392}\), she argued that marriage would have a “civilising effect”\(^{393}\) on people’s consideration of lesbian, gay and bisexual issues that would “feed down into the playground”\(^{394}\).

304. Acknowledging that there had been “some confusion” over why same-sex marriage would reduce homophobic bullying, she set out an explanation—

“The acceptance of equal marriage in Scotland will be heard and understood by those young people up and down the country who are sitting in their living rooms reading the papers that this country has voted for equal marriage and equal rights for lesbian, gay and bisexual people. That is very positive and inspiring news for lesbian, gay and bisexual people, their parents, their godparents and their friends and families, and it will have an impact on the culture in schools.

“The type of vitriol that we are hearing about gay people right now will have a damaging impact and damage the young lesbian, gay and bisexual people who are watching on live stream—and I can assure you that they will be watching it. They are interested in what is being said, and the way people are talking about gay people will have a negative impact. A positive vote for this legislation will change culture and attitudes and, crucially, make modern 21st century Scotland a nation that lesbian, gay and bisexual people want to stay in.”\(^{395}\)
305. Cara Spence gave some context from research—

“... the research that we carried out with 350 LGBT young people in Scotland showed that 69 per cent of LGBT respondents had experienced homophobic or bi-phobic bullying and 10 per cent had left education as a direct result of homophobia broadly within the school environment. The research also showed that homophobic bullying can impact on young people’s mental health, increase the suicide risk and the potential for someone to self-harm, and lead to poorer educational attainment.”

306. Ruth Hunt gave some further data—

“‘The School Report’, which is a self-selecting survey of lesbian, gay and bisexual young people in Scotland ... found that half had experienced homophobic bullying, one in four had tried to take their own life at some point and more than half had deliberately harmed themselves. It is also worth flagging up that the work that we did with YouGov on the Scottish attitudes survey found that 92 per cent of people of faith stated that schools should tackle homophobic and transphobic bullying. There is a very real understanding and buy-in.”

307. She emphasised that including positive examples of lesbian, gay, bisexual and trans issues in day-to-day, ordinary teaching had a positive impact on lesbian, gay and bisexual people—

“It is worth remembering that if the only things that young people hear about sexual orientation are statements such as, “Your shoes are so gay”, “It’s so gay”, and “You’re so gay”, and if they go home and their parents are unhappy and their GP or chaplain are unable to help them, that leads to low self-esteem. A positive reinforcement makes those young people feel better, and it makes the heterosexual young people who hang out with them feel better, too.”

308. Asked how Catholic schools tackled homophobic and transphobic bullying, John Brown said that they deal with it in exactly the same way as all schools did—

“Whenever HMIE reports and collects statistics on whether pupils have ever been bullied in school, the figures are horrendous ... Rightly, all schools in Scotland, including Catholic schools, have zero tolerance of all forms of bullying, but that does not stop the bullying. I agree with what has been said about the scale of homophobic bullying, but it could also be said about lots of

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other kinds of bullying. Schools are trying to stop all bullying—some successfully, some less successfully.\textsuperscript{399}

309. In relation to a question about how teachers in Catholic schools would handle a situation in which a young person had experienced homophobic bullying that had been, in some way, justified by a twisted reference to scripture, John Brown said that they would “recognise the dignity of that young person as a person”\textsuperscript{400} which, he said, would not be dependent on their sexual orientation.\textsuperscript{401} He continued—

“The other side of it is that we just would not accept homophobic bullying. If the youngster who was bullying was able to quote scripture, I would question both his ability and his understanding of scripture. As with all understanding of sacred scripture, people can pull out bits and pieces without seeing the whole. We must be very careful of that, and the person who is doing the bullying—whether it is homophobic or not—must be dealt with severely. We must help young people to understand that every person in society has dignity, and under Catholic belief that dignity is formed by the fact that every person is made in the image and likeness of God. For me as a Catholic, the principle that every human is made in the image and likeness of God means that I must treat other people with a tremendous amount of dignity, whatever their sexual orientation.”\textsuperscript{402}

310. A question about whether there was bullying in schools of religious young people or of children holding traditional values was raised. Michael Calwell (Family Education Trust) said that he knew of people who had been bullied—

“I know a young lady who expresses religious views and has been bullied. The school, which I will not name, has dealt with it. There is an increasing amount of vehement intolerance. The process that we are undergoing here is likely to lead to more of that kind of intolerance.”\textsuperscript{403}

311. John Brown said that he had never seen any evidence to suggest that it was known whether people had been bullied for religious reasons.\textsuperscript{404} Ruth Hunt, however, quoted the national data sets which, she said, showed that bullying came in the following order—

“First and foremost, young people are bullied because of their weight, and second because of their sexual orientation, or perceived sexual orientation. About number five on the list is people who have faith. They tend to be of

\textsuperscript{399} Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 26 September 2013}. Col 1563
\textsuperscript{400} Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 26 September 2013}. Col 1564
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\textsuperscript{403} Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 26 September 2013}. Col 1564
\textsuperscript{404} Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 26 September 2013}. Col 1566
Muslim, Sikh or Hindu faith and are perceived to be terrorists, basically. Christian faith is lower down the list.\(^{405}\)

**Potential for controversy**

312. Asked whether there were any concerns that the changes proposed by the Bill could set off a debate over teaching and classroom reactions similar to the controversy witnessed at the time of the ‘section 2A’ repeals under the bill that led to the Ethical Standards in Public Life etc. (Scotland) Act 2000, John Brown (Catholic Education Commission) raised a concern about equality duties—

“…[under] the public sector equality duty … a local authority, if it is to fulfil that duty, might develop corporate policies that champion the need to advance equality. Advancing equality uniformly at the expense of the protection of religion and belief is where I see the difficulty. The public sector equality duty does not protect teachers who say things like, ‘I don’t believe that this is marriage but the Government is allowing people to enter into what they call marriage’, and that might lead to difficulties with employment law. There are examples of people who have been castigated and taken to court because they have made statements about what marriage is in essence and said that they disagree with the bill. We are looking for protection.\(^{406}\)

313. Ruth Hunt (Stonewell/Stonewall Scotland Education Champions Programme) described what she saw as the “fundamental impact\(^{407}\) of section 2A on Scottish schools and young people—

“… teachers felt paralysed and unable to talk about anything that related to sexual orientation. That legacy lives on in our schools. Some teachers think that that legislation still exists, and some know that it has been repealed but do not know what that means in terms of what they can do. That leads to there being very little reference to lesbian, gay and bisexual issues in any classroom, faith or no faith. The bill has reopened that discussion and it will give teachers the opportunity to think about how they can talk about these issues in an age-appropriate and sensitive way that reflects their belief system.\(^{408}\)

314. She said that any additional legislation relating to education should be avoided “at all costs”\(^{409}\) as it would be “perceived and received”\(^{410}\) by children and

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\(^{408}\) Scottish Parliament Equal Opportunities Committee. *Official Report, 26 September 2013*. Col 1545


teachers as the “equivalent” of section 2A and as a “signal to teachers that they could actively go against” teaching the facts—

“... that is a legacy that you do not want to return to and we do not want to return to under any circumstances. Existing guidance and legislation protects teachers of all faiths and none when they discuss these issues in a sensitive way that protects religious freedom but also enables children to learn the facts about how our society works in 21st century Scotland.”

315. In relation to the same point, Stephen McCrossan (Educational Institute of Scotland) said—

“I work in the equality department of EIS and, as a trade union, we see it as our responsibility to keep teachers informed and give them a more informed view of equality issues. In undertaking that work, we organise LGBT networks for teachers, we have policies for giving advice to LGBT members, we are actively engaged with the Scottish Trades Union Congress to promote LGBT issues, and we actively encourage partnership activity with organisations such as LGBT Youth and Stonewall Scotland. Recently we highlighted Stonewall’s “The School Report: The experiences of gay young people in Britain’s schools in 2012”, its approach to learning and teaching materials on different families, and its education champions programme. We have made our members aware of the LGBT Youth teachers’ toolkit and lesson plans that it has provided.”

Rights and freedoms
316. Michael Calwell (Family Education Trust) felt that it was important to be mindful of demographic changes, “particularly with the inflow of people from very strong pro-marriage, pro-family cultures”. He said—

“That is visibly the case, particularly where I live. Scottish society will become increasingly reliant on people from those demographic backgrounds as our natural population, if you like, declines.”

317. He argued that, without provisions in the Bill to protect parents who wanted and needed their children to have an understanding of marriage consistent with their views, there could be “a lot of problems in classrooms, particularly with parents taking local education authorities to court for violating their rights”.

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Quoting “Article 2, protocol 1” of the European convention on human rights, he said that three provisions needed to be added to the Bill—

“... first, a statutory obligation to inform parents if any teaching about marriage that conflicts with their views is done in the classroom; secondly, a right to withdraw children from such teaching; and, thirdly, a positive obligation on the state to provide children with education that conforms to their parents’ understanding of the vital—pre-political, if you like—nature and purpose of marriage.”

318. For Michael Calwell, even if the young individuals’ views differed from those of their parents and they wanted to be part of the education that was offered in school, parents should be the “ultimate arbiters” of what their children were taught on issues such as this, up to the age at which they could understand the “nuances” of the arguments. He continued, expressing a fear that the state education system would not teach about the subject of marriage in an impartial manner—

“We can already see forces at work within the education system and the civil service that are antagonistic towards the traditional, established view of marriage. We would therefore not be necessarily comfortable that the state education system would provide a properly contextualised version of the wider debate about marriage not just in Scotland but throughout the world.”

319. Cara Spence (LGBT Scotland Challenging Homophobia Together Schools Project) disagreed—

“As a youth organisation, we are really clear that parents’ rights should not be privileged over the rights of young people. It is important that young people’s views are listened to and considered in any decisions that are made about their lives. Such a view is outlined in current practices such as getting it right for every child as well as in the United Nations Convention on the Rights of the Child.

“We recognise that some parents may want to remove children from classes such as sexual health and relationships education. However, we believe that it would be phenomenally impractical on the ground—if the bill goes through—for teachers to remove children from the classroom every time same-sex marriage is mentioned. Ultimately, good education is about dialogue between pupils and teachers—it is about discussing issues—so it
would be difficult to plan for when a young person may raise the issue or to discuss it in the classroom.\textsuperscript{422}

320. Stephen McCrossan (Educational Institute of Scotland) gave a different view on the subject of whether it would be possible to know in advance whether a subject was going to be taught in the classroom—

“The curriculum for excellence offers an awful lot of opportunity. I think that—touching on a previous point—there is now perhaps more of an emphasis on parental involvement within the working life of a school. Parent councils have a more important role.

“It is also good practice within schools that, if any contentious issues are going to be covered within the curriculum, parents are advised of that well in advance. As regards any instances that I have come across, parents have the right to approach the school, the headteacher or perhaps a member of the parent council to register their objection or to withdraw their child from that specific aspect of the religious education curriculum or the sex education curriculum. That is simply my experience, but certainly the curriculum for excellence gives an opportunity for parents to express their views more powerfully.”\textsuperscript{423}

321. Asked whether, should the Bill be passed creating marriage for same-sex couples as well as heterosexual couples, he would expect teachers in schools not to discuss that situation if there were pupils with same-sex parents, Michael Calwell said—

“This is why the bill is very problematic. Ultimately, it would be down to the parents of the other children to decide which of the conflicting versions of marriage they wanted their children to be taught about. That is one of the problems that the bill poses. I wish that I had an easy answer to that question, but the bill raises more questions than it answers.”\textsuperscript{424}

322. John Brown (Catholic Education Commission) felt that the point was not about the discussion of marriage in the way that the Bill would allow it—

“... it is about the business of what marriage is. In that discussion of what marriage is, we want to say that the current legislation about denominational schools remains the same and is guaranteed so that, in the discussion of marriage, a teacher can clearly state that, for some people in society, although the Government has made a decision to call it equal marriage, in the view of the church we cannot call it marriage in the sense that we believe in marriage. That is where the problem arises: we want some sort of right to determine the faith aspects. That is not to say that we will not discuss these issues; the question is whether we say that they are exactly the same ... we

\textsuperscript{422} Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 26 September 2013}. Col 1549-50
\textsuperscript{423} Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 26 September 2013}. Col 1550
\textsuperscript{424} Scottish Parliament Equal Opportunities Committee. \textit{Official Report, 26 September 2013}. Col 1547
want the right and the freedom to teach the definition of marriage that the church would hold to. We also want an assurance that the faith curriculum is not going to be seen necessarily as discriminatory. That is the issue that we need to be careful about in whatever comes out of the bill.”

323. Asked whether, in the specific circumstances of a teacher in a Catholic school having a strong opinion and wanting to express that, the legislation as currently proposed would leave that teacher protected or unprotected, he said—

“First, I do not think that the teacher would have the right simply to say, “This is my strong belief.” However, the teacher would have the right to say, “This is the belief of the Catholic church.” We must clarify that. Secondly, as the bill stands, I believe that a teacher who made that statement would be unprotected, and that worries me.”

324. John Brown was also asked whether teachers in the sector of the Scottish education system that he covered would be allowed to express views that were different from those of the church and still hold down their jobs. He replied—

“Yes and no. A teacher is able to express any view. However, the expectation is that they will say, ‘This may be my view, but the view of the church is X.’ Parents who send their children to a Catholic school have certain expectations, one of which is that the teachers will teach what the Catholic church is about and what its views are. A teacher would be at liberty to say—as has happened in the past—‘I personally may disagree with the church on this particular point, but this is what the church believes and teaches.’ I do not think that the teacher can go beyond that.”

325. Responding to a question about teachers in Catholic schools who said, as a matter of faith, that they didn’t believe that women should be priests nor that they should be ministers and whether such teachers were currently protected under any legislation, John Brown said that he did not know. He added—

“What we are looking at here has to do with marriage, and it is the equalities legislation that worries me. If a teacher said, for example, that women cannot be priests within the Catholic church, society would see that as something for the church to sort out within the church guidelines. However, what is suggested in the bill goes beyond simply the church. That is where my worry would be.”

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326. Speaking to the same point, Cara Spence (LGBT Scotland Challenging Homophobia Together Schools Project) said—

“I assume—although I am not a lawyer—that teachers would be protected under article 9 of the European convention on human rights, in particular in relation to religious freedom. I assume that that is the case as regards protections.”

327. In relation to whether protections set out in guidelines could be guaranteed, Ruth Hunt stated—

“Existing guidance probably needs to be more clearly stated. We would very willingly work with Government to ensure that the guidance is very clearly stated, but that does not require legislation.

“I would also argue that new legislation would not solve the problem anyway, because it would lead to even more disputes about what means what and in what context. Teachers need to teach the facts and they need to know how far they can go in expressing their beliefs. Different schools will have different approaches to that issue, but it is not something that you can legislate about from the top, nor should you.”

328. John Brown (Catholic Education Commission), however, reiterated his concern that local authorities could set policies that could lead to difficulties for teachers who express their beliefs—

“We are looking for something in the bill, not just in advice, because, for example, the Lord Advocate’s advice that is given could change tomorrow. All that that requires is a change of Government and a change of personnel.

“We are looking for some sort of guarantee in the bill that … ensures that there is not the possibility of someone being considered to be discriminatory or homophobic because they hold a particular view about marriage. That would not apply to having a view about equal rights. We have to be very careful that we are not equating equal marriage with equal rights. They are not necessarily the same thing, unless we define marriage in a particular way, and that definition of marriage is not there now.

“We are saying that we want to hold to the traditional church view of marriage and to have it included in the legislation that, under the public sector equality duty … there is protection for the teacher who says, ‘I believe that this is what marriage is.’ I do not think that such protection is in place now.”

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329. Cara Spence, however, emphasised the importance of recognising teachers as professionals—

“I have worked on the ground with teachers; of course they have beliefs and opinions on a wide range of subjects. As a professional—I am a youth worker who works with young people—I have a duty to consider the impact of what I say. Professionals who work with young people reflect critically all the time on what they will say and the impact that it might have on a young person. I do not think that it would make sense to legislate to take the power away from highly competent teachers.”

330. It was put to Cara Spence that greater protection was needed, particularly for denominational schools. She responded—

“For me, a teacher who works in a denominational school should be treated in the same way as everyone else. I know that there are lesbian, gay, bisexual and transgender young people in Catholic schools, and they need to hear positive messages, too, regardless of the educational establishment that they are in. All teachers have the same duties, which are outlined in the GTC code of conduct. That is already there.”

Chaplaincy within public services

331. Asked about concerns regarding clergy who also worked as chaplains within public services – for example, in hospitals – and whether expressing a view against same-sex marriage when conducting a service outwith their chaplaincy roles might conflict with their public service duty, the Rev Blair Robertson (Healthcare Chaplaincy (NHS Scotland)) said that he did not see the issue as a concern—

“Ministers of the Church of Scotland and other denominations who work as healthcare chaplains are employees of the national health service and are bound by the codes of equality and diversity and their own professional codes of conduct, as is the case for any NHS employee.

“Healthcare chaplains often have a dual status in that they are a minister or representative of a faith community as well as a healthcare chaplain. What someone says in their pulpit on a Sunday, as a minister of their church, is what they say on a Sunday; what they do as a healthcare chaplain is what I am interested in, as their manager. I would want to ensure that the service that the chaplain delivered in the hospital was in keeping with NHS equality and diversity policies and our professional code of conduct.”

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332. Adding that healthcare chaplains in the NHS were not appointed to represent any faith or tradition but to deliver a service of spiritual care to people of all faiths,\textsuperscript{435} he explained that not all healthcare chaplains were ministers—

“… not all have a church for which they are responsible or where they preach on Sundays. We have a number of chaplains who are laypeople. In some respects, I would see the situation as being analogous to the fact that, when someone is on NHS premises, they do not smoke, but what they do when they get home is their own business. We do not represent a faith within the hospital: we are not there on behalf of any faith or church as chaplains.”\textsuperscript{436}

333. The Reverend Robertson added that action would only be taken if there was the potential that a chaplain had “brought the good name of healthcare chaplaincy into disrepute” or “misrepresented NHS policies.”\textsuperscript{437}

Conclusion

334. We draw the Parliament’s attention to the views expressed as regards the relationship between the Bill and public services, including educational matters.

DELEGATED POWERS

335. At its meetings on 3 and 10 September and 1 October 2013 the Delegated Powers and Law Reform Committee (“the DPLR Committee”) considered the delegated powers provisions in the Bill at Stage 1.

336. The DPLR Committee outlined its scrutiny of the Bill in its report of 2 October\textsuperscript{438}. It agreed that the majority of the powers outlined in the Bill did not need to be drawn to the attention of the Parliament; however, concerns were raised over two main issues. The first concerns the proposed administrative procedure for the conversion of civil partnerships to marriage. The other concerns changes to the law on the effect of a change of gender on marriage or civil partnership.

Converting civil partnerships to marriage

337. Persons who are in a “qualifying” civil partnership are to be able to marry each other by going through a marriage ceremony under the Marriage (Scotland) Act 1977 as amended by the Bill. Section 9 sets out the effect of such a marriage. It provides that the civil partnership ends on the date of the marriage and the parties are to be treated as having been married from the date of registration of the civil partnership.

338. Section 8 proposes that there should be an alternative mechanism for converting qualifying civil partnerships to marriage in the form of an administrative process rather than through the full solemnisation of the marriage. The DPLR Committee was concerned that section 8(2)(g) allows the Scottish Ministers to make provision about the effect of a qualifying civil partnership changing into a marriage through this procedure. Given (a) that the Bill itself sets out the effect of converting to marriage through a marriage ceremony and (b) the Scottish Government’s position that the effects of converting to marriage administratively should be the same, it was unclear to the DPLR Committee why Ministers required power to make provision about the effect of an “administrative conversion”, rather than the provisions of section 9 also applying to section 8.

339. The DPLR Committee invited the Scottish Government to reconsider whether the power in section 8(2)(g) is necessary or is broader than required to deliver the intended policy of replicating the effect of section 9. If the Scottish Government considers that the power in section 8(2)(g) remains necessary then the Committee is of the view that the higher level of scrutiny afforded by the affirmative procedure is merited given the scope of the power and the potential for it to make different effect to that contained in section 9.

Effect of change of gender on marriage or civil partnership

340. Part 4 of the Bill concerns the effect of a change in the gender of a party to a Scottish marriage or a Scottish civil partnership. The Gender Recognition Act 2004 sets out how persons may have a change in gender legally recognised. It is not currently possible for a married person or for a party to a civil partnership to remain in that legal relationship if they change gender and their spouse or partner does not. That is because the nature of the relationship would then be incompatible with the nature of marriage or civil partnership. The Gender Recognition Act 2004 therefore only allows a full recognition certificate to be issued to persons who are not in a legal relationship or where both parties to the relationship change gender at the same time.

Renewed marriage or civil partnership following issue of full gender recognition certificate

341. Section 28 confers power on the Scottish Ministers to make provision about the solemnisation of a “renewed marriage” or the registration of a “renewed civil partnership” following on from the issue of a full gender recognition certificate to one or both of the parties to a marriage or both parties to a civil partnership. Before making regulations the Scottish Ministers must consult the Registrar General. Section 28(2)(h) allows the Scottish Ministers to make provision about the effect of entering into a renewed marriage or a renewed civil partnership.

342. The DPLR Committee was not clear what the effect of a “renewed marriage” or a “renewed civil partnership” was to be. As the Scottish Government confirmed that there would be no distinct legal effect, the DPLR Committee was not clear why there was a need to make provision about the effect of any change.

343. It concluded that it is not clear that the need for the power in section 28(2)(h) is justified and invited the Government to reflect on whether it should be removed. If further clarification is required as to the continuation of renewed marriages or
renewed civil partnerships then it should be provided in the Bill itself. If amendments to the 1977 or 2004 Act are required to enable those Acts to operate properly then the DPLR Committee would consider those powers further. If further justification for provision about effect can be provided then, in line with its consideration of the power in section 8(2)(g) the DPLR Committee considers that such a power should be subject to the affirmative procedure.

Change of gender of married person or civil partners: additional circumstances
344. Sections 4(2)(c) and 5C of the Gender Recognition Act provide that a full gender recognition certificate can only be issued to a person in a civil partnership where both parties qualify for recognition of their change in gender at the same time. This will remain the position once the Bill is in force.

345. However, the Bill provides a route by which civil partners may stay in a legally recognised relationship after one of the parties changes gender. If the civil partners convert their civil partnership to a marriage (either before or after the issue of an interim gender recognition certificate) then new section 4C of the Gender Recognition Act provides that a full gender recognition certificate can be issued to the party changing gender provided their spouse consents to the marriage continuing.

346. The DPLR Committee expressed concerns as to whether a valid case for the delegation of power in the terms set out in section 5D had been met. New section 5D of the Gender Recognition Act 2004 confers power on the Scottish Ministers “to provide for the issue of a full gender recognition certificate in additional circumstances to those specified in section 4(2)(c) or 5C”. The DPLR Committee questions whether it is appropriate for the Scottish Ministers to be given a wide-ranging power to specify ‘any’ additional circumstances in which a full gender recognition certificate may be issued and would prefer that matter to be set out on the face of the Bill. The DPLR Committee therefore recommended that the Government bring forward amendments to address this issue during the passage of the Bill.

347. The DPLR Committee also recommended that the power should be subject to the affirmative procedure as a minimum level of scrutiny. Given that it was clear from the Scottish Government’s evidence there are a number of possible different options available, the Committee considered that a requirement for consultation on a draft laid before the Parliament would also be appropriate.

Conclusion
348. We note and support the recommendations put forward by the Delegated Powers and Law Reform Committee, and ask that the Scottish Government provide a response in relation to the recommendations and any relevant amendments lodged should the Bill progress.
GENERAL PRINCIPLES: CONCLUSION

349. Under Rule 9.6.1 of Standing Orders, we, as lead committee, are required to report to the Parliament on the general principles of the Bill.

350. We have considered the general principles in the context of opinions expressed in written and oral evidence to us. We recognise the validity of perspectives on all sides of this issue and draw the Parliament’s attention to the depth, range and sincerity of the views submitted to us. We recommend to members of the Parliament to approach the Stage 1 decision with the same dignified tenor as our evidence sessions and with due respect for a diversity of views.

351. The majority of the Committee supports the general principles of the Bill and recommends that Parliament approves the Marriage and Civil Partnership (Scotland) Bill at Stage 1. A minority of the committee does not support the Bill because they disagree in principle or because they are not convinced that adequate protections are in place. We wholeheartedly support the right of individual members to decide on the Bill as a matter of conscience.
ANNEXE A: EXTRACTS FROM THE MINUTES OF THE EQUAL OPPORTUNITIES COMMITTEE

25th Meeting, 2012 (Session 4) Thursday 13 December 2012

Petition PE1413 on Preserving marriage: The Committee considered a petition by Amy King, calling on the Scottish Parliament to urge the Scottish Government to make no changes to the current definition of marriage, as being a union between one man and one woman, regardless of what happens in Westminster. The Committee agreed to draw the Scottish Government’s attention to the petition and to consider it again following the introduction of forthcoming legislation on marriage.

11th Meeting, 2013 (Session 4) Thursday 28 March 2013

Work programme (in private): … The Committee also considered its approach to the Scottish Government's forthcoming marriage and civil partnership bill and agreed to schedule a briefing with the relevant bill team and, on introduction of the bill, issue a call for written evidence.

16th Meeting, 2013 (Session 4) Thursday 23 May 2013

Forthcoming legislation on marriage and civil partnership (in private): The Committee considered its approach to the scrutiny of a forthcoming bill on marriage and civil partnership and agreed that, at its meeting on 20 June, it would, in private, (a) take a briefing from the Parliament’s solicitor and (b) consider its approach to taking evidence on the bill.

20th Meeting, 2013 (Session 4) Thursday 20 June 2013

Forthcoming legislation on marriage and civil partnership (in private): The Committee considered its approach to the scrutiny of forthcoming legislation on marriage and civil partnership at Stage 1 and agreed (a) arrangements for a call for written evidence, (b) an initial programme of oral evidence sessions and (c) an expected timetable for its inquiry and report.

21st Meeting, 2013 (Session 4) Thursday 5 September 2013

Marriage and Civil Partnership (Scotland) Bill - witness expenses: The Committee agreed to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses in the inquiry.

Marriage and Civil Partnership (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Colin Macfarlane, Director, Stonewall Scotland;
Brandi Lee Lough Dennell, Policy and Participation Manager, LGBT Youth Scotland;
John Phillips, The Religious Society of Friends (Quakers);
Tim Hopkins, Director, Equality Network;
James Morton, Scottish Transgender Alliance Manager, Scottish Transgender Alliance;  
Dr. Salah Beltagui, Chair, Parliamentary Committee, Muslim Council of Scotland;  
Rev. Dr. David Easton, Chair, The Methodist Church in Scotland, The Methodist Church in Britain;  
John Deighan, Parliamentary Officer, Bishops’ Conference of Scotland;  
Kieran Turner, Public Policy Officer, Scotland, Evangelical Alliance Scotland.

Marriage and Civil Partnership (Scotland) Bill: The Committee considered its approach to the scrutiny of the Bill at Stage 1 and agreed to take further oral evidence.

22nd Meeting, 2013 (Session 4) Thursday 12 September 2013

Marriage and Civil Partnership (Scotland) Bill: John Finnie declared an interest as a member of Amnesty. The Committee took evidence on the Bill at Stage 1 from—

Rev. Alan Hamilton, Convener, Legal Questions Committee, Church of Scotland;  
Gordon Macdonald, representative, Scotland for Marriage;  
Ephraim Borowski, Director, Scottish Council of Jewish Communities;  
Rev. David Robertson, Minister (Dundee), The Free Church of Scotland;  
Rt. Rev. Dr. John Armes, Bishop of Edinburgh, Scottish Episcopal Church (Faith and Order Board of the General Synod);  
Louise Cameron MSYP, Vice Chair, Scottish Youth Parliament;  
Rev. David Coleman, Convenor, Church & Society Committee, National Synod of Scotland of the United Reformed Church;  
Ross Wright, Celebrant, Humanist Society Scotland;  
Mark Bevan, Programme Director, Amnesty International.

23rd Meeting, 2013 (Session 4) Thursday 19 September 2013

Marriage and Civil Partnership (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Dr. Kelly Kollman, Senior Lecturer in Politics, University of Glasgow;  
Karon Monaghan QC, Matrix Chambers;  
Aidan O’Neill QC, Ampersand Advocates;  
Lynn Welsh, Head of Legal, Equality and Human Rights Commission;  
Professor John Curtice, Professor of Politics, Strathclyde University Research Consultant, ScotCen Social Research
24th Meeting, 2013 (Session 4) Thursday 26 September 2013

Marriage and Civil Partnership (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- John Brown, Catholic Education Commission Member, Scottish Catholic Education Service;
- Michael Calwell, Spokesman, Family Education Trust;
- Ruth Hunt, Deputy Chief Executive, Stonewall/Scotland Education Champions Programme;
- Chief Superintendent Grant Manders, Head of Safer Communities, Police Scotland;
- Stephen McCrossan, National Officer for Education and Equality, The Educational Institute of Scotland;
- Rev. Blair Robertson, Head of Chaplaincy and Spiritual Care, NHS Greater Glasgow and Clyde, Healthcare Chaplaincy (NHS Scotland);
- Cara Spence, Policy Director, LGBT Scotland/Challenging Homophobia Together Schools Project.

25th Meeting, 2013 (Session 4) Thursday 3 October 2013

Decision on taking business in private: The Committee decided to take consideration of its draft report on the Marriage and Civil Partnership (Scotland) Bill at Stage 1 in private at this meeting, at item 3, and at future meetings.

Marriage and Civil Partnership (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Alex Neil, Cabinet Secretary for Health and Wellbeing, Simon Stockwell, Family and Property Law, Julia McCombie, Family and Property Law, and Francesca Morton, Solicitor, Scottish Government.

(item 3) Marriage and Civil Partnership (Scotland) Bill: The Committee considered its draft Stage 1 report.

27th Meeting, 2013 (Session 4) Thursday 31 October 2013

Marriage and Civil Partnership (Scotland) Bill: The Committee considered a draft Stage 1 report. Various changes were agreed to and the Committee agreed to consider a revised draft, in private, at its next meeting.

28th Meeting, 2013 (Session 4) Thursday 7 November 2013

Marriage and Civil Partnership (Scotland) Bill (in private): The Committee considered a revised draft Stage 1 Report. Various changes were agreed to, and the report was agreed for publication.
ANNEXE B: ORAL AND ASSOCIATED WRITTEN EVIDENCE – EQUAL OPPORTUNITIES COMMITTEE

WRITTEN EVIDENCE RECEIVED IN ADVANCE OF ORAL EVIDENCE

Church of Scotland
Dr. Kelly Kollman
Evangelical Alliance Scotland
Family Education Trust
Free Church of Scotland
Humanist Society Scotland
LGBT Youth Scotland
Methodist Church in Britain
Muslim Council of Scotland
Professor John Curtice
Religious Society of Friends (Quakers)
Scotland for Marriage
Scottish Catholic Education Service
Scottish Catholic Parliamentary Office
Scottish Council of Jewish Communities
Scottish Episcopal Church
Scottish Transgender Alliance
Scottish Youth Parliament
The Equality and Human Rights Commission
The Equality Network
United Reformed Church

ORAL EVIDENCE

21st Meeting, 2013 (Session 4) Thursday 5 September 2013

Colin Macfarlane, Director, Stonewall Scotland;
Brandi Lee Lough Dennell, Policy and Participation Manager, LGBT Youth Scotland;
John Phillips, The Religious Society of Friends (Quakers);
Tim Hopkins, Director, Equality Network;
James Morton, Scottish Transgender Alliance Manager, Scottish Transgender Alliance;
Dr. Salah Beltagui, Chair, Parliamentary Committee, Muslim Council of Scotland;
Rev. Dr. David Easton, Chair, The Methodist Church in Scotland, The Methodist Church in Britain;
John Deighan, Parliamentary Officer, Bishops' Conference of Scotland;
Kieran Turner, Public Policy Officer, Scotland, Evangelical Alliance Scotland.
22nd Meeting, 2013 (Session 4) Thursday 12 September 2013

Rev. Alan Hamilton, Convener, Legal Questions Committee, Church of Scotland; Gordon Macdonald, representative, Scotland for Marriage; Ephraim Borowski, Director, Scottish Council of Jewish Communities; Rev. David Robertson, Minister (Dundee), The Free Church of Scotland; Rt. Rev. Dr. John Armes, Bishop of Edinburgh, Scottish Episcopal Church (Faith and Order Board of the General Synod); Louise Cameron MSYP, Vice Chair, Scottish Youth Parliament; Rev. David Coleman, Convenor, Church & Society Committee, National Synod of Scotland of the United Reformed Church; Ross Wright, Celebrant, Humanist Society Scotland; Mark Bevan, Programme Director, Amnesty International

23rd Meeting, 2013 (Session 4) Thursday 19 September 2013

Dr. Kelly Kollman, Senior Lecturer in Politics, University of Glasgow; Karon Monaghan QC, Matrix Chambers; Aidan O'Neill QC, Ampersand Advocates; Lynn Welsh, Head of Legal, Equality and Human Rights Commission; Professor John Curtice, Professor of Politics, Strathclyde University Research Consultant, ScotCen Social Research

24th Meeting, 2013 (Session 4) Thursday 26 September 2013

John Brown, Catholic Education Commission Member, Scottish Catholic Education Service; Michael Calwell, Spokesman, Family Education Trust; Ruth Hunt, Deputy Chief Executive, Stonewell/Stonewall Scotland Education Champions Programme; Chief Superintendent Grant Manders, Head of Safer Communities, Police Scotland; Stephen McCrossan, National Officer for Education and Equality, The Educational Institute of Scotland; Rev. Blair Robertson, Head of Chaplaincy and Spiritual Care, NHS Greater Glasgow and Clyde, Healthcare Chaplaincy (NHS Scotland); Cara Spence, Policy Director, LGBT Scotland/Challenging Homophobia Together Schools Project

25th Meeting, 2013 (Session 4) Thursday 3 October 2013

Alex Neil, Cabinet Secretary for Health and Wellbeing, Simon Stockwell, Family and Property Law, Julia McCombie, Family and Property Law, and Francesca Morton, Solicitor, Scottish Government.
SUPPLEMENTARY EVIDENCE

The Equality Network
Scottish Transgender Alliance
Scotland for Marriage
Scottish Youth Parliament
Amnesty International
Family Education Trust

CORRESPONDENCE

Dr Gordon Macdonald, CARE for Scotland, to Convener – 11 October 2013
Scottish Government to Dr Gordon Macdonald, CARE for Scotland – 11 October 2013
Dr Gordon Macdonald, CARE for Scotland, to Convener – 5 November 2013
Scottish Government to Clerk – 6 November 2013 (93KB pdf)
ANNEXE C: OTHER WRITTEN EVIDENCE – EQUAL OPPORTUNITIES COMMITTEE

Anonymous – 1 to 508

Abercrombie, David
Action for Children
Adam, Heather
Ainsworth, Mary
Aitken, Gordon
Aitken, Graeme
Alexander, Isla
Alexander, James
Allan, Andrew
Allan, Grant
Allen, Mrs K
Allison, Archie
Anderson, Peter
Anderson, Robert
Anstey, Christopher
Anthony, David
Anthony, Lily
Arnott, Andrew
Ashman, Alex
Atkinson, Michael
Avison, Amanda
Bain, Hugh
Bain, Peter
Baird, Prof. Alfred
Baird, William
Baker, Sally
Baptist Union of Scotland
Barker, Timothy
Barrie, Emma
Barringer, Brian
Bat Or, Clare
Beattie, Jennifer
Belcher, Helen
Bell, Gordon
Bender, Rev. Stephen
Bennet, Lorna
Bentley, Steven
Beresford, John
Bestwick, Christine and John
Bevington, Jim
Beyer, Erin
Bhatti, Lesley
Bi Community News
Black, David
Blackburn, Helen
Blance, Darren
Blench, Declan
Boden, Fergus
Bo'Ness Old Kirk (Church of Scotland)
Boyle, Anne-Marie
Bradley, Samuel
Braine, David
Braithwaite, Megan
Brash, Derek
Bray, Isobel
Brew, Marc
Brian, David
Brodie, Andrew
Brown, Allan
Brown, Ian
Brown, Lesley Anne
Brown, Talitha
Browne, Phil
Brownsey, Paul
Burn, Rowan
Bush, Alan Mark
Butterworth, Frances
Buxton, Anthony
Calder, Calum
Calder, Stephen
Calvary Carluke Christian Fellowship
Calwell, Michael
Cameron, Ross
Cammisar, Georjean
Campbell, Anna
Campbell, Craig
Campbell, Douglas
Care
Carlin, Eric
Carmichael, Alison
Carmichael, Helen
Carnall, Jane
Carroll, Sinead
Catholic, Truth
Cavers, Sheila
Chandler, Fiona
Changing Attitude Scotland
Chapman, Vaila
Charlotte Baptist Chapel
Charleston, Taylor
Charlwood-Green, Lisa
Cheyne, Susan
Children in Scotland
Chmiel, Ross
The Christian Institute
Christy, Neil
Chryston Church of Scotland
Church of Scotland – Watt, Rev Dr Hugh
Clark, Jessica
Clark, Matthew
Clarkson, Jamie
Clayton, Kevin
Clement, Rebecca
Clinton, Michael
Cochrane, Audrey
Coleman, Emma
Collins, Owen
Community Church Edinburgh
Convery, Mave
Cookson, Lucas Jaiden
Coroon, Rebecca
Cowie, Kevin Mark Stephen
Craig, Margaret
Cree, Lisa
Creechan, Henry
Creechan, Michael
Crockard, Deborah
Crozier, Caroline
Cruikshank, Paul
Cummings, Chelsea
Cunningham, Stephanie
Curtice, Prof John
Custodio-Forbes, Hugh
Dalrymple, Amy
Dalziel, Kirsty
Daniel, George and Linda
Davidson, Euan
Davies, Hugh
Davis, Laura-Jayne
Deeside Christian Fellowship Church
Denyer, Veronica
Diamond, Ian
Dian, Jenny
Dickie, Eileen
Dickson, Karen
Dietz, Karen
Digance, Claire
Dix, Fiona
Dodds, Dr Euan
Dolby, Douglas
Doran, David
Dorigo, Lewis
Douglas Renton Ministries
Downie, David Nathan
Dowsett, Rosemary
Ducker, Judi
Duffy, Chris
Eadie, Danielle
Earlie, Nancy
East Ayrshire Council
Edwards, Andrew
Edwards, Julie
Emily
Ewing, Mandy Evans
Faculty of Advocates
Farrell, Keith Francis
Faulds, Allan
Faulkner, Emma
Ferguson, Gavin
Fife Islamic Centre Glenrothes
Figures, Craig
Findlay, Alan
Finlayson, Connor SP
Fire Brigades Union LGBT National Committee
Fitzpatrick, Storm Potratz
Fleming, Donald
Forbes, James
Forde, Amanda
Fothergill, Rev Andrew
Fox, Richard
Fraser, Grant
Fraser-Granados, Tim
Free Church of Scotland - Dr John Morrison
Free Church of Scotland (Continuing) - Public Questions Religion and Morals Committee
Free Church of Scotland - Thomas Davis
Free Presbyterian Church of Scotland
French, Deborah
Frew, Iain
Fulton, Kirsty
Gallagher, Aodhan
Gallagher, Daniel Arthur
Gann, Roger
Garman, Chris
Gay, Charelene
Gibson, Alexander W
Gill, Catriona
Gilmour, Paul
Glasgow City Council
Glasgow Unitarian Church
Goodhall, Adam
Goodman, David
Gordon, Jimmy
Gorman, Caroline
Gosling, Sarah
Graham, Natalie
Granados, Michael
Green, Liz
Greig, Shaun
Gronowski, Dr Rebekah
GUSRC
Gusterson, Mary and John
Hadfield, M
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Harris, Jennifer
Harris, Paula
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Jones, Ria Elaine
Jupp, Ed
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Kellock, Andrew
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Livingstone, Mark
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Lockhart, Mary
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Macconnell, Mrs Angela
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Mcbride Kenneth, Martin
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McGread, Vincent
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McIntosh, Alex
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Morrison, Katie
Morrison, Mrs Betty
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National Union of Journalists
Nccallum, John
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Noble, Alastair
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O’Hara, Andrew
O’Hara-Thomas, Mark
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O’Neill, Joanne
O’Neill, Thom
Osborne, Nicola
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Oxborrow, Trevor
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Plushkis, Ronald
Porter, E
Porter, Jemma
Pott, Jonny
Potter, Megan
Potter, Rosemary
Potter, Stella
Predota, Elinor
Preston, Susan
Price, Julie
Priest, Alex
Proctor, John
Puntis, Timothy
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Quinn, Robin
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Richardson, Nathan
Richter, C
Rigg, Simon
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Robertson, Sabrina
Robertson, Tony
Robertson, Victoria
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Rodgers, Sarah
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Ross, C Brian
Rowell, Karen
Russell, C
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Schmitz, Tony
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Semple, Lynsey
Semple, Ross
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Service, Jonathan
Shaw, Stephen
Shedden, Dave
Shields, Alison M
Shirkie, William
Simmons, Peter
Size, Michelle
Slater, Jeremy
Smart, Liam
Smith, Alisdair
Smith, Amanda
Smith MSP, Elaine
Smith, Alan
Smith, Fiona
Smith, Gary
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Solomon, Mark
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Stainsby, Cath
St Andrews Aquarium
St Augustine's Church
St Bernadette's Church Larbert
St Marys Cathedral Glasgow
Stenhouse, Ryan
Stevens, Laurel
Stewart, Gillian F
Stewart, Morianne
Stewart-Amsden, Derby
 Stocks, Margaret Weir
Strachan, Andrew
Sullivan, Elizabeth
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Woodsford-Dean, Mark
Wright, Ross
Wylie, Ralph
Wyllie, Callum
Young, Lynzi
Young, M C G
Zdravkov, Hristo
ANNEXE D: THE DELEGATED POWERS PROVISIONS IN THE MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

The Delegated Powers and Law Reform Committee’s report to the Equal Opportunities Committee on the delegated powers provisions in the Marriage and Civil Partnership (Scotland) Bill, published on 2 October 2013.

51st Report, 2013 (Session 4): Marriage and Civil Partnership (Scotland) Bill
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