



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EQUAL OPPORTUNITIES COMMITTEE

Thursday 12 September 2013

Session 4

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EQUAL OPPORTUNITIES COMMITTEE
22nd Meeting 2013, Session 4

CONVENER

*Margaret McCulloch (Central Scotland) (Lab)

DEPUTY CONVENER

*Marco Biagi (Edinburgh Central) (SNP)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)

*John Finnie (Highlands and Islands) (Ind)

*Alex Johnstone (North East Scotland) (Con)

*John Mason (Glasgow Shettleston) (SNP)

*Siobhan McMahon (Central Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

The Rt Rev Dr John Armes (Scottish Episcopal Church)

Mark Bevan (Amnesty International)

Ephraim Borowski (Scottish Council of Jewish Communities)

Louise Cameron (Scottish Youth Parliament)

The Rev David Coleman (United Reformed Church)

Jim Eadie (Edinburgh Southern) (SNP)

The Rev Dr Alan Hamilton (Church of Scotland)

Dr Gordon Macdonald (Scotland for Marriage)

The Rev David Robertson (Free Church of Scotland)

Ross Wright (Humanist Society Scotland)

CLERK TO THE COMMITTEE

Douglas Thornton

LOCATION

Committee Room 2

Scottish Parliament

Equal Opportunities Committee

Thursday 12 September 2013

[The Convener *opened the meeting at 08:30*]

Marriage and Civil Partnership (Scotland) Bill: Stage 1

The Convener (Margaret McCulloch): Welcome to the 22nd meeting in 2013 of the Equal Opportunities Committee. I ask those present to switch off or put into flight mode any electronic devices.

The Parliament's photographer is present and will be here for a few minutes while he takes some photographs. At the table are the clerking and research team, official reporters and broadcasting services staff. Around the room, we are supported by staff from the security office.

I welcome the observers in the public gallery. My name is Margaret McCulloch and I am the committee convener. I invite committee members and witnesses to introduce themselves. We will start on my right.

Marco Biagi (Edinburgh Central) (SNP): I am the deputy convener and the MSP for Edinburgh Central.

Siobhan McMahon (Central Scotland) (Lab): I am an MSP for Central Scotland.

John Mason (Glasgow Shettleston) (SNP): I am the MSP for Glasgow Shettleston.

Alex Johnstone (North East Scotland) (Con): I am an MSP for North East Scotland.

Christian Allard (North East Scotland) (SNP): I am also an MSP for North East Scotland.

John Finnie (Highlands and Islands) (Ind): Madainn mhath—good morning. I am an MSP for the Highlands and Islands. Given that Amnesty International is providing evidence later on, I take this opportunity to refer to my declaration in the register of interests that I am a member of Amnesty.

The Convener: I also welcome Jim Eadie MSP, who is sitting on my left.

Jim Eadie (Edinburgh Southern) (SNP): I am the MSP for Edinburgh Southern.

The Rev Dr Alan Hamilton (Church of Scotland): I am a parish minister from Bearsden. I am also the convener of the Church of Scotland's legal questions committee.

Ephraim Borowski (Scottish Council of Jewish Communities): I am the director of the Scottish Council of Jewish Communities.

The Rev David Robertson (Free Church of Scotland): I am the minister of St Peter's Free Church in Dundee and director of Solas (Centre for Public Christianity).

The Rt Rev Dr John Armes (Scottish Episcopal Church): I am the Bishop of Edinburgh. I represent the Scottish Episcopal Church's faith and order board.

The Convener: Thank you. I remind members that questions to witnesses should be put through the chair. Witnesses should indicate to me or the clerk on my left when they wish to speak. John Finnie will begin the questioning.

John Finnie: Good morning, panel. Would you marry people who you knew to be infertile?

The Rev David Robertson: Yes—I would have no problem in doing that, although I am not sure how I would know whether they were infertile.

The Rt Rev Dr John Armes: Yes.

The Rev Dr Alan Hamilton: 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 and deacons would not do so—if they were told, which is fairly unlikely.

Ephraim Borowski: As you will be aware from our submission, I speak for a diverse range of opinions in the Jewish community. Like the Rev Dr Hamilton, I am not aware that anyone has raised the question or has any concerns about the matter.

John Finnie: I read all the witness submissions with great interest. The Rev David Robertson suggests that the Scottish Parliament would be acting *ultra vires*. Would you care to expand on that please?

The Rev David Robertson: I expanded on it in my submission, in which I say that 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.

John Finnie: Your submission also talked about the relationship between the Scottish ministers and the Conservative-Liberal Democrat coalition in London. Would you care to expand on that in relation to the bill?

The Rev David Robertson: That was meant to be deliberately provocative, I am afraid. It is an illustration that suggests that 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?

The definition has changed, and what we are trying to say in our submission is that 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.

John Finnie: Do you want to put on the record the actual phrase that you used?

The Rev David Robertson: It is there in the submission and that is fine. Our argument is—and I accept that it is an emotive argument—that the issue is being driven by politics as much as by ethics. I do not think that that can be denied.

John Finnie: What is the panel's view on opting out?

Dr Gordon Macdonald (Scotland for Marriage): Are you asking about opting out or opting in?

John Finnie: A number of submissions refer to public service employees, for example.

Dr Macdonald: 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.

The Rev Dr Alan Hamilton: As we have made clear, the Church of Scotland has not debated the issue of same-sex marriage or religious civil partnerships, but the legal questions committee, which has been leading the response, is deeply concerned that public servants, whether registrars or teachers, and particularly those who began their employment before the introduction of the bill or before the bill was on the horizon—the point has been well made that this is a relatively recent innovation—will find themselves prejudiced and might even lose their jobs. For reasons that appear to be acceptable to the Scottish

Government and perhaps to the Scottish Parliament in relation to celebrants and those who play an integral part in a marriage, if those celebrants are ministers or deacons of the Church of Scotland or other priests, they could find themselves at risk. There should be equivalent protections for registrars, who are obviously on the front line, and, if one extends the argument further, for others who might find themselves in positions of considerable conflict, including teachers.

The Rt Rev Dr John Armes: I simply concur with what Alan Hamilton has just said. We in the Episcopal Church have similar concerns.

Ephraim Borowski: I, too, concur. As I said, 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—certainly, starting from the current position, it would necessarily be opting in, because same-sex marriage is not possible at the moment—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 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.

The Rev David Robertson: 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.

Dr Macdonald: Freedom of conscience for people who work across the public sector is crucial. Under equalities legislation, the principle of reasonable accommodation should be taken on board in our courts, at Westminster and at Holyrood, and there is an opportunity for Holyrood to set an example in the area. 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. For many people of faith and others, that is 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.

Ephraim Borowski: In our submission, we make two distinctions that are relevant to what Gordon Macdonald has just said. One is a distinction between rural and urban areas. 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.

08:45

The other distinction is between people who are already in post, who had a reasonable expectation as to what the job involved when they applied for it and were appointed, and people who take up a post from now on, knowing what the new legislation is. 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.

Dr Macdonald: 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 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.

John Finnie: If I noted your comments correctly, Mr Robertson, you mentioned “complete freedom”. Would the panel see that extending to a teacher who is an atheist not referring to God?

The Rev David Robertson: Yes, totally. To ask a teacher who is an atheist to lead in an act of Christian worship, for example, would be an act of supreme hypocrisy. To ask a teacher who is an atheist not to refer to God would be completely stupid, in the same way that asking somebody like me, who does not agree with same-sex marriage, not to refer to same-sex marriage would be stupid. People are allowed different views. If a teacher is asked whether they are an atheist or whether they believe in God, would they answer, “I am sorry, but I am not allowed to refer to God”? Freedom would of course allow them to refer to God.

John Finnie: Do you believe that there are currently safeguards regarding the difference between the views of creationists and those of others regarding teaching in schools?

The Rev David Robertson: I am not sure what creationism has to do with this subject, and I presume that by “creationism” you mean young-earth creationism. I assume that we are referring to people panicking and thinking, “Oh dear, someone may actually believe that God created the earth 6,000 years ago.” My view is that religion—religious philosophy—should be taught in philosophy classes, and science should be taught in science classes. It is as simple as that. I do not think that we should bring politics or religion into science classes. The fact that someone is an atheist or a Christian in a science class is completely irrelevant to what science they teach.

The Rev Dr Alan Hamilton: That is a fair analysis. I am struggling to see the connection between a belief in creationism and the issue that is before us today, not least because there are so many different—

John Finnie: My reference was to freedom. Let me give you a ridiculous example—another example, anyway. If a local authority street sweeper said that they did not agree with the views of a particular religion and did not want to sweep the street outside its building, would that be reasonable?

The Rev David Robertson: It would be reasonable if his religion involved street sweeping—which it clearly does not. On the other hand, for my religion and most people’s religion, particularly for those of us who are officials in it, being married is a religious thing, and it is a big act. The analogy is irrelevant. I know what you are trying to say but, logically, it does not work—not in the real world.

Dr Macdonald: It is certainly possible to have a discussion in a school environment about the law changing and same-sex marriage being introduced without that being seen as advocacy or the promotion of an ideology. The problem that we have with some of the resources that have been targeted by Stonewall Scotland at primaries 1 and 2 is that they are clearly advocacy, and there is no guarantee that parents will have a right to withdraw their children. The resources might well be used not in a sex education class but in a reading class; if so, there would be no legal right to withdraw their children. That is the problem. That does not mean, however, that people cannot have a discussion in fourth-year modern studies about the Scottish Parliament’s Marriage and Civil Partnership (Scotland) Bill and the campaign that went around it. We are talking about completely different scenarios.

Marco Biagi: A lot of literature has been written. You drew attention to “King & King” in your submission, Dr Macdonald. How does your position extend to mainstream literature that may, for example, have homosexual relations in it? “Moll Flanders” is one such example. Is that something that should not be available to children?

Dr Macdonald: The point that we are making is that parents should have a right to know what their children are being taught and a right to withdraw their children if they are unhappy with that without fear of being prosecuted, which is apparently the threat south of the border. That seems to me to be an issue of parental choice and freedom and of respecting the rights of parents to have their children educated in accordance with their religious and philosophical beliefs, rather than a discussion about whether this or that resource should be used in this or that class.

Siobhan McMahon: A number of organisations and individuals who support the bill have written submissions suggesting that there are robust protections in the bill. Do you share that view? If you do not—I presume that you do not—what are the reasons for that? Can you think of anything that could be put into the bill to make it workable for your religious body?

Dr Macdonald: To be honest, I think that the protections in the bill are very weak. 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 or, more significantly, the definition of public disbenefit. 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.

Equally, though, Parliament has quite a bit of political clout when it comes to influencing the Westminster Government. It could seek a stronger agreement from Westminster that it will amend the Equality Act 2010. I would encourage Parliament to do that.

I draw the committee’s attention to what the Faculty of Advocates has said and I would encourage you to ask it for its views. It says that the current agreement that the Scottish Government has come up with is not watertight and could well be challenged, not only by chaplains and people working in the public sector but by religious celebrants who were forced by their denomination to participate, even if it goes against their conscience.

The Rev Dr Alan Hamilton: The Church of Scotland would broadly share 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.

However, we have not seen two important parts of the scheme. The scheme is not just what is in the bill that is before Parliament. It will be contained in delegated legislation that we have not seen. It will also be contained in an 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.

That is why we have introduced the suggestion in paragraphs 19 and 20 of our submission that 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.

We believe that that suggestion would reduce the vulnerability of the current scheme because religious and belief bodies would not be seen as agents of the state. We urge the Scottish Parliament to consider that. Nevertheless, even with that innovation, we have deep concerns that, when challenged, the proposed legislation will unravel. There is plenty of high-level legal opinion to that effect.

We are also concerned that the proposed legislation is an invitation to take religious bodies in particular through the court system. 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—to put it colloquially; these are not the terms of the General Assembly deliverance—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.

Dr Macdonald: Just to clarify, the issue comes down to what a public function is. When the cabinet secretary comes to the committee, I encourage you to ask him what he thinks a public function is and whether a minister of religion who is marrying people is performing a public function. 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.

Siobhan McMahon: I suppose the counter to that would be that at the moment, the registrar is seen as someone who performs a function for the local authority whereas the religious celebrant performs a function for their church or organisation. Do you have a view on that, Dr Macdonald?

Dr Macdonald: The religious celebrant performs a function for the Government, but they do it within the context of a religious service.

Siobhan McMahon: Some of the witnesses have already commented on the topic that I will raise. What are your views on the equality impact assessment that has been carried out? Although the Scottish Government has said that it does not wish anyone to be forced into performing ceremonies, it has also said that those assurances might not be guaranteed—that was in the EqIA. Do you have views on that?

Ephraim Borowski: There are three aspects. One relates to what Alan Hamilton and Gordon Macdonald have said about external challenges to the bill. We did not address that directly in our submission. We addressed the internal gaps, as I said earlier, where the precise drafting means that the protections that are clearly intended by the bill might not be watertight. As for the more general question of the equality impact, we have drawn attention to a couple of things that are perhaps partially internal and partially external, which suggest that there is a lack of equality of arms, as it were, between the two sides in the debate.

09:00

It is clear that there are strongly held ethical views on both sides. Therefore, we have commented that it is a concern that, for example, the Lord Advocate produces guidance on the prosecution of people for expressing their opposition to the proposal in a particularly strong manner but not guidance on the prosecution of people who express their support of it.

That comes back to the points that have been made about what goes on in classrooms and how that is presented. There does not seem to be the same concern for the clear distinction that is already made between religious education, as it is now understood, and religious instruction. In my view at any rate, that is similar to the point that Mr

Robertson made about how things are taught and about the distinction between religious and moral education on the one hand and science education on the other.

The Rev David Robertson: My concern is not so much about the clergy—to be honest, we can look after ourselves—as about other people, who might find themselves victims of discrimination. A fundamental axiom of the way in which those who rule us govern and educate is that they discriminate against discrimination. The minute that those who are for same-sex marriage rather cleverly started calling it equal marriage—which means that people are now asked, “Are you for equal marriage?”—the ball game changed. 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. No one should be allowed to do something that is unjust and unequal, and the Parliament will not legislate on that basis.

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.

The Convener: Bishop Armes, would you like to comment or are you okay?

The Rt Rev Dr John Armes: I think that I am okay. The Scottish Episcopal Church is probably at a slightly different place on the spectrum from some of the churches whose views we have heard. We express a wide spectrum of views. Some of us are firmly in favour of the bill and some of us are wary of and concerned about it. It is important to us that whatever is built into the bill protects people who might be against it.

Siobhan McMahon: The Church of Scotland’s submission says:

“If the Church were to change its position on marriage to include same-sex marriage, such a change would only be enacted into the law of the Church under its Barrier Act 1697.”

I am not familiar with your church law. Would that process be complicated or simple?

The Rev Dr Alan Hamilton: I am sure that my colleagues in the public gallery would agree that nothing in the Church of Scotland is simple.

It is important to acknowledge that there are diverse views in the Church of Scotland and that

we are debating a number of matters relating to same-sex issues. It is common wisdom that the fault lines over same-sex marriage fall differently from those on the broader issue of same-sex relationships.

There would undoubtedly have to be a period of discussion and debate. Because the issue is so important, even after that period, if one general assembly decided in favour of the denomination allowing its celebrants to carry out same-sex marriage—I do not think that our celebrants would ever be forced to do that—there would still have to be a confirmatory decision of a majority of the presbyteries of the Church of Scotland over the next 12 months, followed by a second decision in favour of the proposal by the succeeding general assembly. The process is not straightforward, but such things happen.

Alex Johnstone: We have gone into detail on a number of issues. However, I do not want to miss the opportunity to discuss the more general issue that we are dealing with.

I have read through the submissions and, although I have not ticked off the boxes, I note that most of the submissions take the opportunity to talk about marriage as the basis for family and the rearing of children. Would you like to say anything specific about the role of marriage in the provision of a stable basis for rearing children?

Dr Macdonald: I think that it is good that the committee should consider the bill in principle at this stage and not just the details—part of my concern has been that the entire focus will be on the details.

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.

The state has never been interested in whether a man and a woman who are getting married love each other; it is interested in whether they are committed to staying together and will provide a framework in which children will 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.

Alex Johnstone: Over my lifetime, and probably for a while before that, there has been a perception that the strength of marriage and its role in society and the strength of family life have been weakening, with a number of obvious impacts on how society conducts itself. Do you believe that the weakening of the status of marriage has weakened family life?

Dr Macdonald: 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.

Alex Johnstone: When politicians and others discuss key issues, we often use phrases such as, "All other things being equal, how will this change perceptions?" Can the changes that are contained in the bill be discussed with the assumption that they will not have an impact on the status of marriage in other respects?

Dr Macdonald: The bill fundamentally redefines marriage. It means that marriage ceases to be a relationship between a man and a woman, with the complementarity of two genders, and becomes a relationship between two people of the same sex. You get into even more confusion when you get into the whole transgender issue—that came out this week at the Delegated Powers and Law Reform Committee, which some of the committee are members of.

The principle is opened up that marriage can be redefined in any way that the state wishes. Whether the state has the authority to do that is not an issue on which Scotland for Marriage would take a view, but it is certainly one on which churches would take a view, given their understanding of the relationship between church and state.

Alex Johnstone: Should the proposed change in legislation take place, do you think that it would weaken marriage as one of the foundations on which family life and society as a whole are based?

Dr Macdonald: I do, but I will let others comment, too.

The Rev David Robertson: Alex Johnstone is hitting the heart of the issue. Two things that he said are particularly perceptive. First, 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. I wrote a letter to David Cameron and spoke to the Liberal Democrat spokesperson who drew up the British Government's legislation on the issue. He basically admitted that they could not define marriage. How do we redefine marriage if we cannot define it?

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.

Marco Biagi: Will you explain to me how increasing the number of people who get married each year will cause a decline in marriage?

The Rev David Robertson: Because you are redefining marriage for everyone—you are changing what marriage is—so you are turning all marriages into civil partnerships.

The Rev Dr Alan Hamilton: As I have said repeatedly, the General Assembly of the Church of Scotland has not debated the matter, but there are certainly folk in the church who would agree with what Mr Robertson and Dr Macdonald have said. Even those who do not are anxious that 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.

It is of deep concern to almost everyone in the Church of Scotland that there should be protection for everyone, regardless of sexual orientation—whether heterosexual or homosexual—and that there should also be equality. However, there is concern that the bill is a move beyond equality, given what is available to same-sex couples under the 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. As I said, that is the view of my committee—the general assembly has not yet debated the matter.

09:15

The Rt Rev Dr John Armes: The Episcopal Church has a similar process, and we really need to discuss in depth all the different views in the church, which I think are pretty representative of the views of the public at large, to find out where we go on the issue. I support Mr Hamilton's point about having a more protracted series of discussions on some of the issues.

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.

John Mason: I will start with the submission from the Free Church of Scotland. I must put on record my strong disagreement with the suggestion that the Scottish Parliament is acting as

“a tool of the Conservative/Liberal Democrat Coalition in London.”

The Rev David Robertson: I thought that you might.

John Mason: I am not entirely happy with the bill but, whatever the reason for it was, it was not for the Parliament to be such a “tool”.

On the point about the state's right to be involved, it has been suggested that marriage involves three contracts: the first is between the two people in question; the second is between the two people and the state; and the third is between the two people and God. Given the second of those contracts, does the state not have the right to get involved?

The Rev David Robertson: That is an interesting question. First, I should apologise for the remark that you highlighted, which came from my friend and colleague Gordon Wilson, who is turning into something of a radical in his old age. He has promised, however, not to try to expel Mr Salmond again.

The state has the right to legislate on any civil contracts that it wishes. 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.

To refer again to the Westminster Government, 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.”

John Mason: The Humanist Society Scotland, which will give evidence in the next session, has suggested that the Church of Scotland has been put in a privileged position and that that should not be the case. Does the Church of Scotland believe that it has such a position compared with other churches?

The Rev Dr Alan Hamilton: 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.

John Mason: Does anyone else wish to comment on the Church of Scotland's position or are you all happy to leave the matter?

The Rev Dr Alan Hamilton: I have to say that I am not entirely sure in what way the Church of Scotland is deemed to be privileged.

John Mason: The bill specifically mentions it as a denomination, whereas other denominations have not been mentioned.

The Rev Dr Alan Hamilton: Does that make it privileged?

John Mason: In some people's view it does. I just wanted to hear your views, and I will ask the Humanist Society later for its thoughts.

Ephraim Borowski: I take the opportunity to reiterate a related point in our submission that is to

do not with the allegedly privileged position of the Church of Scotland but the distinction between religious marriage and belief marriage. 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.

John Mason: Mr Armes, I will pick up on what you said about the definition of marriage as “a covenanted relationship of love”. Why do we restrict that to two people? From my reading of scripture, that has been the case in the Jewish and Christian traditions but, having lived in Nepal, I know that many Hindu and Muslim societies have had the tradition of marriage being between one man and more than one wife—perhaps two wives. If people, especially the two women involved, willingly entered into such a relationship knowing and accepting that the marriage involved three people, would you be happy for that to be one of the definitions of marriage as a covenanted relationship of love?

The Rt Rev Dr John Armes: That is an interesting question, but I think that my answer would be no. 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.

John Mason: Would it also be correct to say that, in Christian tradition, marriage has always been between one man and one woman?

The Rt Rev Dr John Armes: Yes.

John Mason: So if you are changing Christian tradition in one way, you would be reasonably relaxed about changing it in another way.

The Rt Rev Dr John Armes: Well, no. We are engaged in a conversation at the moment, but whether people can marry more than one spouse at one time will not be part of our conversation. My point about marriage being a covenanted relationship of love is shared by some people in one part of our church, but it is not shared by others. That is precisely the kind of conversation that we in our church need to get into—and are engaged in at the moment—before we can reach any decision on whether we can officiate at same-sex marriages.

The Convener: We are running quite tight for time. To ensure that other committee members have an opportunity to ask questions, I ask that answers be concise.

Marco Biagi: A lot of the areas that I wanted to ask about have been covered. The witness from the Free Church of Scotland referred to the definition of marriage—the definition seems to be very important to you. Did you say that the difference between marriage and civil partnership is that marriage is sacred and a civil partnership is just a civil contract?

The Rev David Robertson: No, it is more than that. You said, “sacred”; in putting forward this bill you are by definition turning every marriage into a civil contract.

Marco Biagi: Do you support the existing civil partnerships legislation?

The Rev David Robertson: That is for the Government; the Government can do that. I happen to believe the traditional Christian teaching, which is that sex should be between a man and a woman, in the confines of marriage. I realise that that is deeply unfashionable. However, that is not the issue here.

Marco Biagi: You talked about your discussion with a Whitehall official, or politician—whoever it was—in which you asked them to define marriage and they said that they could not do so. Would you say that within your faith you have a reasonably robust definition of marriage?

The Rev David Robertson: Yes. It is there in our submission. The response that the person initially gave was that marriage is between two people who love each other. The logical progression—at which people throw up their hands in horror and have a heart attack—would be to say that if that is the case there is nothing wrong with someone marrying their adult son, if they love each other. To say that marriage is between two people who love each other is

emotive and sounds great in the press, but as a basis for law it is an absurd definition.

Our definition is in our submission and is basically the catholic Christian orthodox position:

“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.”

Marco Biagi: You said that you would marry an infertile couple, which casts doubt on that definition.

I am concerned that the religious groups to which the witnesses belong all have slightly different definitions. We heard that one of the Jewish communities has its own interpretation of what marriage should be, and we heard that the Episcopal Church has a variety of interpretations and is coming to a position. Are there multiple definitions out there?

The Rt Rev Dr John Armes: The Episcopal Church says in its canon 31, which is part of its submission:

“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.”

That is how we define marriage, and I would think that that is pretty much in step with most Christian churches at the moment.

What I am saying is that within our church, partly because of what is abroad in the state, the challenge that we face is whether we need to rethink that definition. However, at the moment, that is where we stand and that is what constitutes marriage in the Episcopal Church. 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.

The Rev Dr Alan Hamilton: 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.

If the Scottish Government and the Scottish Parliament want the churches to change that, they need to recognise that this is an immense ask—it is a huge ask for us to depart from our historical position.

Marco Biagi: In what way does the Scottish Government want churches to change their definition?

The Rev Dr Alan Hamilton: It is offering the possibility.

Marco Biagi: That is a very different prospect, legally.

The Rev Dr Alan Hamilton: Yes—if the Scottish Government’s opt-in provisions are efficacious. However, we are not convinced that they are efficacious.

Marco Biagi: If the opt-in provisions were robust and protected against challenge, would you have no objection to the bill?

The Rev Dr Alan Hamilton: What we have been asked all along, and particularly in the consultation, is whether we support the bill; the Scottish Government has introduced a bill and asked whether we can support it. We cannot give that because our position on human sexuality remains unchanged. It is the historic catholic orthodox position that is followed by most Christians around the world. If the Scottish Government wants our support, we will have to change, and that is a big ask for us.

The real issue is not the nuances about our understanding of marriage. The Scottish Government and the Scottish Parliament are focusing on one simple issue: is marriage between one man and one woman or can it be between people of the same sex?

09:30

Dr Macdonald: If the Parliament makes that jump and says that marriage is not only between one man and one woman—which is not only the historic Christian position but the historic British and western position—it must then ask where it goes as an issue of principle. Would it be discriminatory not to legislate to legalise polygamy, for example? The Parliament would clearly be allowing marriage to be redefined in one way but not in another way. On what basis would it be doing that? It must answer that question.

What would we do in the scenario of a bisexual man who lives with a man and a woman? There have already been moves in some European countries to recognise such relationships in law. The bill cannot be seen in isolation. We must ask where it will lead to logically, even if there is at the moment no political will to go there.

The Convener: Thank you very much. As I have said, we are quite tight for time, so I pass you over to Christian Allard.

Christian Allard: I thank the witnesses for coming. I will continue on the subject of not taking the bill in isolation.

Since the Scottish Government started the conversation in 2011, many other countries have

introduced bills on same-sex marriage. The unholy relationship in London between the Liberal Democrats and the Conservatives did so, but so did other countries in Europe.

How will that play with your organisation and churches in those countries? We live in a globalised world now, so people move a lot more than they did in the past. Will that and the different legislation in different countries lead to conflict with your organisation and churches?

There are two questions. The first is about timing. Is the Scottish Government right to have taken a little bit longer in legislating than other countries have? Secondly, if the bill is not passed, how will it affect your organisation and churches if other countries have already passed similar legislation?

Dr Macdonald: Very few countries in the world have passed such legislation; I think about 10 have. France has recently done so, as Mr Allard will know. It is a particularly Western phenomenon. I do not expect that large swathes of countries in Africa, the middle east or eastern Europe will rush to legalise same-sex marriage in the next 20 years unless they are forced to do so by the Council of Europe or the European Court of Human Rights, which is a danger for those that are members of the Council of Europe, regardless of national views or democratic mandates. The view that legalisation of same-sex marriage is a progressive trend and that everybody will do it eventually is questionable, to be honest.

My organisation is a Scottish organisation and has no plans to set up a campaign in France, you will be pleased to know.

Ephraim Borowski: Perhaps I could begin to answer the first question by picking up something that Alan Hamilton said. We are discussing two different questions: one is whether we support the bill and the other is what our position is, or will be, as agents within the new legislation.

We all have opinions and some of us, as has already been made clear, have not yet formed an opinion, have different opinions or are still far away from forming an official opinion through our various governing bodies. Therefore, from that point of view, it may be that the process is far too swift. Although parliamentary procedure may seem to be very slow, the various denominations that are represented around the table grind even slower. Therefore, to ask not just the first question but to go further and ask the second question is far too swift for us.

On your second question, my understanding—I stand ready to be corrected—is that, in most European countries and in other jurisdictions, civil marriage and religious marriage are completely separate from one another and there are two

separate ceremonies. People go to the registry office for one and to the church, synagogue, mosque or whatever for the other. An unintended consequence of the bill may be that that will start to happen more in this country. Therefore, 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.

The Convener: Christian, do you have another question?

Christian Allard: No—I would just like to know the views of the other panel members on the matter.

The Rt Rev Dr John Armes: For us, too, the timescale is too short; we need more time to work this through. I am not sure where the Scottish Episcopal Church will get to or what resolution we will reach on the bill.

Nevertheless, Christian Allard is right to say that we are part of a much wider family of churches; we are part of various communions of churches as well. For example, we are in communion with the church in Sweden, which celebrates same-sex marriages under the state there. We are also, in the Anglican communion, part of a world-wide family of churches that includes lots of churches in Africa and other parts of the world to which same-sex marriage would be complete anathema, and we have responsibilities to them as well. We must be careful not to be seen to be going it alone as a church, and we must respect the fact that the speed at which we might want to move is not the speed at which the whole church wants to move.

The implication in the question is correct; we are not autonomous on this issue, because we want to respect where our brothers and sisters elsewhere stand.

Christian Allard: I am interested to hear that the countries that you are talking about will not legislate in this way. An amendment has been proposed by the Equality Network and the Scottish Transgender Alliance that would allow a couple with a civil partnership that was registered in another country to marry in Scotland. Do you think that that would lead to an influx here? Could that be one of the consequences of the bill?

The Rt Rev Dr John Armes: I have not thought that one through in any depth, but that might be the case. If one of our churches were to say that it would happily officiate at same-sex marriages, I am sure that people would come here from elsewhere. There are many Christians who are gay and would want to celebrate their partnerships in a sanctified fashion. If that could be done within

the context of a church service somewhere, they may well seek to go to that somewhere to do it. Whether that somewhere will be the Scottish Episcopal Church, the Church of Scotland or any of our denominations is something that we still need to work through.

Jim Eadie: My questions are primarily for the Rev Hamilton, but I would welcome views from the other panel members, if we have time. You expressed some doubt about the opt-in provisions of the bill. Do you not accept not only that the bill, in and of itself, will not compel individual celebrants to perform same-sex marriages, but that, beyond that, it will not allow individual celebrants within the Church of Scotland to celebrate same-sex marriage for the very reason that you outlined, which is that there would have to be a protracted period of debate and discussion before the General Assembly of the Church of Scotland could arrive at a definitive position?

The Rev Dr Alan Hamilton: The period would not be all that protracted—

Jim Eadie: Well, it will have taken from 2009 to 2015 to decide on the issue of gay clergy within the church.

The Rev Dr Alan Hamilton: Can I be allowed to complete my answer, convener?

The decision would take not decades, but a matter of years. Our concern is that, if the Church of Scotland generally says no, we will be challenged under European legislation, and whatever is in the UK act or in delegated legislation will unravel. If we say yes, ministers and deacons may, if they so choose, celebrate same-sex marriages, but the denomination or the individual celebrant—or both—who says no will find themselves being challenged under European legislation.

Jim Eadie's question is based on a red herring. If the Church of Scotland were even to delay taking action it could find itself being challenged. What is of deep concern is not whether the Scottish Government or the Parliament want to offer protections to the Church of Scotland or any other denomination, but whether those protections would be effective.

Jim Eadie: It is very helpful to have that response on the record.

Dr Macdonald: The bill cannot be seen in isolation from other legislation, such as the Equality Act 2010, which was passed by Westminster, 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.

Ephraim Borowski: I am aware of nothing in the Equality Act 2010 that suggests that there should be a hierarchy of grounds of equality, but it is clear from looking at the decisions in case law that that has emerged and that issues about gender and sexuality trump issues about religion. Although there may be nothing in the UK Equality Act 2010 to that effect, the wording of schedule 5, part II, head L (miscellaneous), in section L2 (equal opportunities) of the Scotland Act 1998 lays down a hierarchy of grounds in which religious beliefs comes right at the very end along with political beliefs.

If anything, there is even more potential for legal challenge in Scotland than is the case elsewhere in the UK. Someone mentioned—I think it was Gordon Macdonald—the provision in European law for a margin of appreciation. As he said, we need to consider whether we allow a situation to develop in all the UK jurisdictions in which it is possible to deal reasonably with clashes of different equality strands rather than one of them always being understood to trump another for whatever reason.

Jim Eadie: My final question is to the Rev Dr Alan Hamilton. Are you aware of individual clergy in the Church of Scotland who support the bill for whom it is of a source of considerable personal pain that they will not be able to perform same-sex marriages? Clergy in my constituency have expressed that view to me, so I speak with some knowledge of the issue.

The Rev Dr Alan Hamilton: I am interested to know how you know that those clergy will not be allowed to conduct same-sex marriages because I do not know that.

Jim Eadie: I have been told that the legislation will, in and of itself, not allow that to happen

because they are governed by the General Assembly and the Government's intention is not to interfere in the internal affairs of individual denominations.

The Rev Dr Alan Hamilton: I have made it clear from the outset that that is a matter that the General Assembly has yet to consider, so I struggle to understand how Mr Eadie can reach that conclusion—unless he has the gift of prophecy.

Jim Eadie: You are misinterpreting and misrepresenting the view that I have expressed. I am expressing the view of my constituents who are clergy in the Church of Scotland and other denominations. They have told me that it is a matter of personal pain that they will not be able to perform same-sex marriages.

The Rev Dr Alan Hamilton: I refer to my earlier answer.

The Convener: I thank Jim Eadie for his questions. Marco Biagi has a quick question.

Marco Biagi: If this were a bill simply to legislate for same-sex civil marriage and left out religious officiation in its entirety, would you have the same concerns? A yes or no response would be fine.

The Rev Dr Alan Hamilton: Different concerns.

Dr Macdonald: We would certainly be concerned because we believe that marriage is between a man and a woman.

Marco Biagi: That is a yes.

Dr Macdonald: Yes.

Ephraim Borowski: I would have to take advice from the different religious strands of the Jewish community, but I suspect that we would say that that is a completely different question.

The Rev David Robertson: The question does not make sense because the state cannot regulate religious marriage; it can regulate only civil marriage. The obvious answer is that I would share the same concerns, but I would be most concerned about a state that thinks it can regulate religious marriages—the state has no right to do that.

The Rt Rev Dr John Armes: The concerns would be different. We are concerned about society at large and not just about what happens in the confines of our churches.

The Convener: I thank all the witnesses for their contributions and for coming along to the committee. I suspend the meeting to allow our second panel of witnesses to take their seats.

09:46

Meeting suspended.

09:56

On resuming—

The Convener: I welcome our second panel of witnesses and ask them to introduce themselves.

Louise Cameron (Scottish Youth Parliament): I am vice-chair of the Scottish Youth Parliament.

The Rev David Coleman (United Reformed Church): I am here in my capacity as convener of the church and society committee of the national synod of Scotland of the United Reformed Church.

Ross Wright (Humanist Society Scotland): I am from the Humanist Society Scotland and am a celebrant and spokesperson on equal marriage.

Mark Bevan (Amnesty International): I am from Amnesty International.

The Convener: John Mason will start the questioning.

John Mason: That was a surprise, convener.

I thank the witnesses for their submissions. I have to say that I found the Scottish Youth Parliament submission to be interesting. It says, for example:

“We are firmly of the belief that two people in love should be allowed to demonstrate their love and commitment to each other in a way that reflects their personal feelings for each other.”

Why did you choose the number two? In many parts of the world in the past—indeed, in some parts of the world in the present—it has been perfectly culturally acceptable to have three people in a marriage as long as everyone is willing to go into it.

Louise Cameron: 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.

John Mason: So even if all three individuals loved each other and were willing to go into that relationship, you would be against that?

Louise Cameron: Yes. That is not what we are fighting for—we are fighting for the ability for two people who love each other to get married.

John Mason: Thank you.

Turning to Mr Wright from the Humanist Society, I do not know whether you were present for the previous evidence session but I asked the Church of Scotland about your comment that it was in a privileged position. I have to say that it seemed to

be a bit vague about that. Can you clarify for us why you think that the church is in a privileged position?

Ross Wright: 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.

John Mason: In your submission, you say:

“it is unthinkable that a public official carrying out a public service be allowed to discriminate on the grounds of sexuality/sexual orientation.”

However, there are other examples of people working in the public sector doing things in different ways. The obvious one is that individual employees are allowed to opt out of being involved in abortion. I do not know whether you think that that is a good or a bad thing, but it has been suggested as a possible model for the future in that, although the state pays everyone and provides services, a bit of movement is allowed for individual conscience.

10:00

Ross Wright: 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—somebody alluded to this earlier—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.

John Mason: Do you accept that people can be of equal value, but that people will disagree as to whether some behaviour is wrong, and that people will draw a distinction between having a sexual orientation and what people’s sexual activity is?

Ross Wright: That is another situation that is not logical. It is like talking about somebody being

black but not showing their skin so that nobody knows that they are different. It is a fundamental part of that individual, and expressing sexuality and being gay is the same thing.

John Mason: I assume that you would be against having faith schools at all. That is an example in which the state provides education in different ways, either in faith schools or in non-faith schools.

Ross Wright: Unfortunately, I am not here to debate faith in education, and I am not an expert on it.

John Mason: I accept that. My point is that you are not happy with the state providing funds and services in different ways—you want everything to be exactly the same.

Ross Wright: If that is the way in which the state currently agrees that things should be managed, we would prefer it to be different, but we are not campaigning for that actively in relation to the bill before us.

John Finnie: Mr Wright, you mention gender recognition certificates in your submission. Could you outline your position on that and say why you hold that position? If it helps, I will quote what you have written. Your submission states:

“The HSS strongly supports the ability for a transgendered person to remain married when obtaining a full Gender recognition Certificate.”

Ross Wright: Yes. That is so that if, within a marriage between a man and a woman, one of them decides to change gender, they do not need to get divorced in order then to remarry as a same-sex couple.

John Finnie: I move on to the issue of freedom of speech. You state in your submission:

“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.”

Is marriage not different?

Ross Wright: I do not see it as different, and 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.

John Finnie: Mr Bevan, we have heard a lot about the hierarchy of rights. Amnesty will have experience of dealing with situations in which

there are competing rights. How do you think that should be dealt with in relation to legislation?

Mark Bevan: 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. I do not know whether you are referring to 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. We do not see those two things as being in conflict at all. The freedom to practise a religion does not conflict with the freedom to marry everyone else in the community on an equal basis.

John Finnie: What is your comment about what people say are the protections that the bill will afford to religious celebrants?

Mark Bevan: 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.

Marco Biagi: Mr Bevan, you just referred to the freedom to practise. As the representative of an organisation that is active in many countries and is very strong on the freedom to practise and religious persecution around the world, do you consider that there is an issue with freedom to practise for those faiths, including those of the people who are sitting next to you who are not currently free to practise their view of marriage, which includes performing them for same-sex couples?

Mark Bevan: I am sorry; could you clarify your question?

Marco Biagi: Freedom to practise is an important human right. Do you think that there is a problem that many faiths in Scotland that wish to perform same-sex marriages and practise their faith in that way are forbidden to do so?

Mark Bevan: Absolutely.

Siobhan McMahon: Mr Wright, in your evidence, you said that you would defend anyone's right to practise their beliefs, and that you would advocate for other beliefs. However, when you say that you do not understand the opposing view, is it because you might not, or do not want to, understand the religious body or its belief? Do you recognise that?

Ross Wright: No. I understand where people are coming from but if we are going to have the modern, secular democracy that we advocate, we should be able to frame laws that allow both to coexist. That is why we strongly support the bill, because it supports the rights of people like

ourselves who wish to conduct such marriages and protects those who do not.

One point that I would like to make about the conscience clause—I think that Mr Eadie alluded to this—is that it works only one way. 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.

Siobhan McMahon: It will come as no surprise to anyone if I ask the same question about the equality impact assessment and the witnesses' views on that. As I said, it was conducted for the bill and the guarantees that we are told are robust might not be enacted. Do you have a view on that? Do you think that they can be?

The Rev David Coleman: Can you clarify which guarantees you mean?

Siobhan McMahon: The guarantee that says that no celebrant will have to perform same-sex marriages if they do not wish to, the protection for people who work in education, and the protection for freedom of speech, along with various others. They are all supposed to be contained in the bill. There are two sides of the argument. One is saying that that is fine and they are content because they do not wish to see religious bodies being forced into doing something, and they therefore believe that the principles in the bill are robust. The opposing view is that the guarantees are not robust and that they can be challenged. The equality impact assessment also casts doubt on the guarantees. I just want to hear your opinions.

The Rev David Coleman: We have been following the issue intently during the past couple of years and 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.

Louise Cameron: When the Scottish Youth Parliament carried out its love equally campaign, we were clear that we believe that religious bodies that do not want to conduct same-sex marriages

should not be forced into doing that, but that religious bodies that want to should have the choice to do so.

John Mason: I have a supplementary question for Mr Coleman on the point that he just made. In your written evidence, you talk about protections being “more than adequate” and you state that freedom of speech

“is more than safeguarded, leaning heavily in the direction of the protection of those opposed”.

Would you like the bill to be amended to weaken it or to make it more level?

The Rev David Coleman: No. 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.

Siobhan McMahon: I thank the Scottish Youth Parliament for its submission, but I seek a bit of clarification on some of the points in it. You mention the consultation that you carried out, to which you received 42,804 responses. How was the consultation advertised and how were the responses collated?

Louise Cameron: We have members of the Scottish Youth Parliament in each constituency and others who represent voluntary organisations. They went out and consulted young people on the issues that are in our youth manifesto.

Siobhan McMahon: How did they engage with young people? Was it in schools or colleges, or did it involve hosting public events? I seek a bit of clarification on that.

Louise Cameron: Because we have a variety of people in the Scottish Youth Parliament, we have people who represent schools as well as colleges and universities, and everyone has their own way of approaching people. When I consult, I do it through my school, but I know that for members who are not at school it can be difficult to go into schools to consult, so they do it in a way that is suitable for them. That works well, because we get a wide range of opinions and we do not just target the school group. We target all age ranges.

Siobhan McMahon: I am asking about the issue only because at another committee yesterday we were trying to find out whether a consultation was robust. I want to try to understand how you got to the figure of 42,804 responses. Did the consultation involve conversations with people? Alternatively, were specific forms filled out or was there an online survey?

Louise Cameron: I was not personally involved in it, because I was not a member at the time, so I cannot answer that. I am sorry, but I can get back to you on that.

Siobhan McMahon: That would help. Obviously, the submission is based solely on the 42,804 responses to the consultation. Seemingly, the bill is the priority for young people. If it is—I do not dispute that that is the case—I need to know how that was arrived at. For instance, youth unemployment might be a priority for young people. How did you arrive at the priority?

Louise Cameron: The Scottish Youth Parliament voted on which issue to choose as our national campaign, and this issue was picked over issues such as youth unemployment and transport. My generation feel strongly about the issue. We do not tolerate bullying or inequality and we are a generation that believes in fairness. Young people back the bill because it is important to them. We do not believe that inequality should stand in society any more.

Siobhan McMahon: I fully accept where you are coming from, but I am just trying to find out how the figure was collated. Could you provide more information to the committee in writing?

Louise Cameron: Yes.

Siobhan McMahon: That would be helpful.

10:15

Marco Biagi: As representatives of organisations that are not lesbian, gay, bisexual and transgender organisations, or which do not perform marriages—indeed, Mr Bevan and Ms Cameron, along with the representative from Scotland for Marriage, are the only such representatives from whom we have heard—if you were to sum up why you have made this an issue for your organisation, what would you say?

Louise Cameron: I think that people of my age believe that two people who love each other should have the right to get married. 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.

Mark Bevan: Our position comes, as you would expect, from a general promotion of human rights. 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.

Looking more broadly across the world, we see legislation allowing permissive attitudes in relation to hate crime. We see people being executed by the state as a result of practising their sexual behaviour. We see people being tortured. We see limitations on demonstrations and movements in Turkey, Russia, Albania, Latvia and so on.

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.

Marco Biagi: Some people have cited the fact that the Universal Declaration of Human Rights and the ECHR confer a right to marry in terms of a man and a woman as an argument against same-sex marriage. How do you respond to that?

Mark Bevan: 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.

Marco Biagi: Let me move on to a slightly different topic. Ms Cameron, can you tell me what it is like these days to be at school and be gay?

Louise Cameron: I do not think that someone being gay is an issue for my generation; it is just accepted now. There is nothing wrong with being gay; it is just accepted. 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. However, in my school being gay is not a big deal. Young people are accepted as being gay and it is all right. My generation do not think that being LGBT is a problem.

Marco Biagi: There is a proposal to change the age for gender recognition from 18 to 16. That is the age for legal recognition of a change in gender in habitual life rather than anything else. Has the Youth Parliament considered that and do you have a position on it?

Louise Cameron: I am sorry, but I am not sure about that. I can get back to you on that.

Marco Biagi: That is fair enough. I am keen to get responses to my final question from everyone on the panel. The Amnesty International Scotland submission to the Scottish Government's consultation states:

“Denial of equal civil recognition of same sex relationships prevents many people from enjoying a whole range of other rights ... and stigmatises those relationships in ways that can fuel discrimination”,

which is the reason why civil partnerships were not adequate. I presume that Amnesty International agrees with that—do the other witnesses?

The Rev David Coleman: We are talking “civil” here. We discussed the issues in the committee and 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.

Ross Wright: 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.

Marco Biagi: Having compared the situation to racism, how would you respond to the comment from the Rev David Robertson that if you equate the issue to racism how can you justify allowing denominations to choose to be “racist”?

Ross Wright: It is an accommodation that, as my colleague the Rev David Coleman said, we are prepared to concede—it is giving freedom to discriminate, which we are not happy about, but for the sake of getting the bill passed we will concede it.

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 washing my hair or be otherwise busy that day. There is no need for me to give a reason why I will not marry someone.

Alex Johnstone: I have a short question on a point that Ross Wright just made. You expressed the view that the bill is imperfect but that you see it as being an improvement. Do you see the bill as being an end in itself or simply one more step along the way?

Ross Wright: In respect of what?

Alex Johnstone: In the progress of the rights of homosexuals, for example.

Ross Wright: 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.

John Mason: Mr Wright, you said that the bill is permissive and that the approach will not be compulsory. However—I made this point at last week’s meeting, too—Catholic adoption agencies were originally permitted to place children with same-sex couples and it was not compulsory that they did so, but the approach quite quickly became compulsory, which meant that agencies had to close down. Might the same thing happen in the context of the bill?

Ross Wright: My understanding of the situation, although I am not fully aware of it, is that

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.

John Mason: So in the same way, in future, the churches might have a free choice to close down or conduct same-sex marriages.

Ross Wright: It is interesting that the witness from the Church of Scotland was so concerned that that is a threat. A solution for people, if they are so concerned about the threat, might be to choose to get out of the civil marriage business and conduct some kind of blessing to give unions the emotional and religious status that they require for their marriages.

The Convener: Alex Johnstone has some more questions.

Alex Johnstone: I do not have a huge number of questions. Before I take up a general point, I want to pick up on something that Mark Bevan said. You talked about live instruments and the wide range of family relationships that exists across the world, which makes marriage difficult to define. My instant reaction was to want to ask whether you take the view that all definitions should be equally applicable everywhere.

Mark Bevan: That is a tricky question, on which I think that I would want to come back to you, because it is important that we look at the context in which the setting for families exists. We have a cultural norm, which the bill clearly challenges, given the strength of feeling about it.

The guidance that we get from international law is that we should take a progressive view, generally speaking, of what a family relationship should consist of, and that the guiding principle behind that should be equality. Therefore, if I were to answer your question in a way that has direct relevance to the bill, I think that 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.

Alex Johnstone: Thank you. If you have additional information on that, I would be delighted to have it.

My main objective in asking this question is to ensure that I put to the panel the point that I put to the previous one—the discussion can be brief. The submissions from most of if not all the previous witnesses talked about the role of marriage in broader society. I asked the witnesses

whether marriage has a role in broader society as a basis for family, rearing children and providing social stability. Do you have views on that? Will the proposed change in the law weaken the role of marriage in other aspects of society?

The Rev David Coleman: 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.

10:30

Ross Wright: 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.

I would like to bring up another point about marriage in general. We can do as many surveys as we want to, but 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.

Mark Bevan: We do not take a view on marriage being a preferable status from the point of view of societal cohesion, which I think was at the heart of Alex Johnstone's question; 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.

Earlier, a question was asked about the views of young people and schoolchildren on the issue. A three-country survey that was done last year in Finland, the United Kingdom and France looked 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.

Siobhan McMahon: You have twice given examples of the existence of homophobia and what it means. Last week, I suggested to the representative from Stonewall that those people who oppose the bill are not homophobic and he agreed. Those people, too, would be appalled at the high suicide rates that you mentioned. When we talk about people who oppose the bill, we are not talking about people who are homophobic. They oppose the bill for various reasons. I am sure that there are homophobic people who oppose the bill—I am not for a moment suggesting that there are not—but the vast majority of the people who oppose it are not homophobic, and I do not think that it helps the argument to conflate those issues. What is your opinion on that?

Mark Bevan: 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.

Louise Cameron: To come back on that point, the survey that LGBT Youth Scotland conducted found that 10 per cent of people who suffered homophobic bullying left school. Should we be encouraging a Scotland in which people leave school because no one provides them with support to deal with homophobic bullying?

I do not think that the bill will weaken the role of marriage in Scotland. Marriage is personal to each person and it will not make a difference to people of other beliefs if there is same-sex marriage.

Siobhan McMahon: No one is suggesting that we should not tackle the issue of people having to leave school because of homophobic bullying. However, that is not what the bill is about. You are equating the two things. I understand that some people may think that they are linked—I do not oppose that view—but the statistic that you mentioned is not necessarily related to the bill.

Similarly, I understand that to get to equality is a huge thing, and that the bullying stats show that there are people who do not believe in equality. However, the stats that are being used are not

helpful when we are talking about the principles of the bill and how it will impact on all the religions. Perhaps you will clarify whether those who were surveyed were asked specifically how the bill will impact on religions. When you conducted the survey, how many religious bodies or faith schools were asked about that?

Louise Cameron: I am not suggesting that there is a direct link between homophobic bullying and same-sex marriage, but it will make for a more tolerant Scotland if we have same-sex marriage. If stable relationships and people's rights in Scotland are taught in schools, it will make people more tolerant of same-sex relationships.

The Rev David Coleman: Might I return to Mr Allard's question about the stability of society and marriage?

Alex Johnstone: It was my question.

The Rev David Coleman: Sorry—it was Mr Johnstone.

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.

Marco Biagi: Ms Cameron, I wonder whether you have had time to look at all the submissions from the various organisations. I want to ask about the kinds of things that have been talked about as changes to education, linked to the bill, from those who oppose it—for example, the editing of what textbooks might be available and the removal of discussion of same-sex marriage from many sections of the curriculum. If such provisions were enacted, would it make homophobic bullying better or worse?

Louise Cameron: I think that the bill will make young people more tolerant of same-sex relationships. If you introduce it, you are giving a classroom teacher who has a non-biased view, who is teaching about it—sorry.

The Convener: Maybe one of the other witnesses would like to contribute.

Ross Wright: In the classroom setting, teachers are there to teach and educate. It is really about facilitating the discussions that the children want to have; it is not about a teacher expressing a view one way or the other, because that is not their job. I was privileged to have a modern studies teacher

whose political affiliations, try as I may, I never found out. That is the teaching model that I would like to see for sexuality and discussion of this kind.

The Rev David Coleman: Again based on our discussions, we feel that what is taught in schools should not introduce a note of controversy that would be intimidating to children in same-sex families. If the bill becomes law, the issues should be presented in the neutral way that Mr Wright described rather than being over in a corner as something furtive and secret.

Mark Bevan: Amnesty International and UNICEF produce a lot of information for schools on education around human rights issues. Some of that will be seen as controversial according to the views of the families of the children attending those schools, but if we want a more tolerant society it is important that we both understand ourselves—and we have knowledge and information provided by teachers; the facts—and have knowledge and information on the ways in which other people around us live.

Louise Cameron: Teachers have a responsibility to be professional and they should leave their personal opinions at the classroom door. It would just not be right if, say, I went into a classroom and a teacher said to me, "Right, you have to vote against Scottish independence." They should not show bias on any topic; education should be all about what is right in society and what the law is.

Christian Allard: Do you agree with the suggestion by the Equality Network and the Scottish Transgender Alliance that an amendment is needed to allow couples with a civil partnership registered in another country to marry in Scotland? You can just say yes or no, if you want, or you can tell us about the consequences of such an amendment.

Ross Wright: I support the suggestion that those with a civil partnership registered in another country should be able to marry in this country.

The Rev David Coleman: As far as I can tell, we also support such a move.

Mark Bevan: I, too, agree with that suggestion. Indeed, I believe that, earlier this week, the European court produced evidence and took a similar position on that very issue.

Louise Cameron: I agree with the suggestion.

Christian Allard: Thank you for those brief responses.

I want to ask about the process for and timing of the bill and indeed the legislation in England and Wales. Given that the process began in 2011, has there been enough time to consider all the issues in the run-up to the bill? What do you think of the

consultation that the Scottish Government carried out?

Secondly, what are your thoughts on the Government's proposal to carry out a review, perhaps in a year's time, if the bill is passed? Might that answer some of the concerns that you and indeed the churches have expressed?

The Rev David Coleman: Things have certainly not been rushed and the consultations have been thorough, if not repetitive. We see no reason for any further delay or further consultation. We know where people stand; anyone with eyes and ears or other ways of absorbing information knows that. We are content with the timetable and the care that has been taken, particularly to protect those who oppose the legislation.

Louise Cameron: Every time young people have been consulted on the issue, two thirds to three quarters have said that same-sex marriage should be allowed in this country. I think that that is evidence enough that the proposal has enough backing.

The process has not been undertaken too quickly and the fact is that all the support is in place. I completely agree with the Rev David Coleman that the consultations have been repetitive; over and over again, we have had the same answer that the country is for this move.

Christian Allard: Are you saying, then, that we should not have a review after the bill is passed—if, indeed, it is passed? The fact is that the Scottish Government intends to carry out a review of the legislation once—and if—the bill is passed. Should that review take place or should the process be shortened and a review not be carried out?

Louise Cameron: It is a good idea to have a review. After all, you have to be thorough with your policies.

Ross Wright: To be honest, I did not realise that such a review was planned. I was aware of a review of civil partnership legislation, which we would fully support.

Following on from Louise Cameron's point about majorities and numbers, I note that equality is not really about numbers. 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.

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.

10:45

John Mason: Convener, can you clarify the point about a review? I think that all legislation is reviewed.

The Convener: I believe that the civil partnerships legislation is to be reviewed.

Siobhan McMahon: Mr Wright, I think that you have answered this question, so it might be for other panel members, but feel free to comment. There have been two extensive consultations, but I believe that the majority of those who have presented evidence to the committee are against the bill's proposals. Do you know of any other bill whose proposals have been put to the public and the majority have said that they are not in favour that has come to a parliamentary committee and gone through the parliamentary process as fast as this bill? Do you believe that that is acceptable?

Ross Wright: I do. First, as I am sure all committee members recognise, a consultation is not a referendum. However, if the consultation had been a referendum, there would have been challenges to it on counts of electoral law because all the postcards that were sent in were in response to one question: "Do you disagree?" If there had been the question, "Do you agree or disagree?", we could start discussing that. However, all the submissions that were against were in one direction, whereas it is fair to say that the Equality Network allowed dissent in its submissions.

Siobhan McMahon: I do not think that it is fair to say that all the submissions were against. Perhaps the majority were, but I would not say that they all were.

Ross Wright: The vast majority were.

Siobhan McMahon: Yes, but not all of them. You accept that.

Ross Wright: Yes.

Siobhan McMahon: Okay.

The Convener: Would any of the other witnesses like to comment?

The Rev David Coleman: On the timing, I think that I noted in our written submission that people are already marrying, so the discussion is not about that but about whether the church and—from your point of view—the state recognises that

people are entering into committed relationships with the aspiration that they be lifelong.

One thing that came out of our discussions was that we finally had to take seriously what everyone had been taught in college—that the people who marry are the couple, and the state or the churches either recognise or do not recognise that.

Jim Eadie: In the earlier session, we heard from witnesses that a number of the religious denominations—principally the Church of Scotland, but others as well—have concerns about the robustness of the protections in the bill and the opt-in provision. Is that something that your denomination has discussed, Mr Coleman, and do you share those reservations?

The Rev David Coleman: We have discussed it at great length and have been convinced that the protections are very robust indeed.

Jim Eadie: Can you say a bit more about that, please?

The Rev David Coleman: We looked at the matter and took legal advice from people within the church. We also spoke to civil servants working for the Scottish Parliament. We interrogated the matter as far as we could and the answer that came back every time was that it was safe to oppose same-sex marriage and safe to be in favour of it. Of course, there have been legal opinions, but we sometimes wonder whether it is the case that he who pays the piper calls the tune and expects everybody else to dance to it. We must look at where the legal opinion is coming from and perhaps judge it in that way.

Jim Eadie: In the earlier session, Mr Macdonald referred to the Faculty of Advocates, which I think has expressed the view that the bill's provisions could be subject to legal challenge. Can you comment on that?

The Rev David Coleman: I am not a lawyer but, as I said, we have been taking legal advice, and as far as we can tell, with our work within the church we have to keep on saying, "Do not be afraid." That phrase occurs in the Bible so many hundreds of times—"Wherever you stand, do not be afraid."

Jim Eadie: As I understand it, the United Reformed Church is a mainstream Christian denomination within the reformed tradition, so to that extent you are similar to the Church of Scotland.

The Rev David Coleman: Yes, it is in the same family.

Jim Eadie: Another similarity is that there is a range of views within your denomination. However, despite those two similarities, you have

come to a different conclusion from the Church of Scotland in that you welcome the bill. How soon will your individual celebrants who are in favour of same-sex marriage be able to perform such marriages if the bill is enacted?

The Rev David Coleman: I can tell you for a fact that there are people who would wish to register as celebrants as soon as it is legally possible to do so and others who would definitely never register. The nature of the church is that it contains a diversity of opinion. We support the bill because it is permissive and not prescriptive. That approach received the endorsement of the Scottish synod when we asked a gathering about that.

Ross Wright: It was a telling point when spokespeople for opponents of the bill were asked what they would like to be in it to make it robust but none of them could come up with anything that would make it robust enough for them. That reflects a fear, which in our opinion is unfounded, that they are in some way being victimised. However, the evidence suggests that the bill is robust. From everything that I have seen, it cannot be legally challenged.

An interesting point that came out towards the end from the Church of Scotland representative was that, ultimately, if people feel that they will be forced into it, they have the option—again, it is their choice—to opt out and then to do blessings for people who have had a civil marriage.

Mark Bevan: Seven countries in the Council of Europe have already progressed similar legislation. I checked with our lawyers yesterday and they are not aware of any issue in the courts in those countries that have had legislation in place for some time.

Marco Biagi: I have a straightforward question. Does any of our witnesses believe that having children is a central purpose of marriage?

Louise Cameron: No.

The Rev David Coleman: I have to say no because, as I said, we believe that marriage is primarily the fellowship of the couple, although, taking marriage fairly widely as a social institution and social good, it certainly adds greatly to stability and benefits children.

Ross Wright: Further to my earlier point, I reiterate that, if opponents of the bill believe that marriage is good for children, it seems logical that all those people who have children should be able to get married.

The discussion has focused on technicalities and legalities, but I would like to recount a small story about a situation that I was placed in when I was conducting a ceremony at the beautiful Tynninghame beach near North Berwick. 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". From the very first meeting, I had to explain that I could not say that word and I would be prosecuted if I inferred that I was marrying them. 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.

Mark Bevan: Amnesty would not take a position in relation to the member's question. 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.

Marco Biagi: I presume that Amnesty believes that, because there are a variety of types of family and they all deserve equal respect, the type of family that we see in our society of a man, a woman and no children is a valid marriage.

Mark Bevan: Absolutely.

Louise Cameron: Everyone's relationship is personal to them and everyone's marriage is personal to them. What would we do for people who are infertile and cannot have children? A child does not define a marriage. A marriage is between two people who love each other and it should be personal to them. Some people do not want to have children, and that is the choice of those in the individual relationship.

The Convener: Does any of our witnesses want to make any further comments?

The Rev David Coleman: One further point—although Mr Wright has already brought it up—is that 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.

Ross Wright: 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.

The Convener: As there are no further comments, I thank our witnesses very much for their contributions.

That concludes today's meeting. Our next meeting will be on Thursday 19 September and will include further oral evidence on the Marriage and Civil Partnership (Scotland) Bill.

Meeting closed at 10:56.

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