



## **Marriage and Civil Partnership (Scotland) Bill**

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Bill Number:	SP Bill 36
Introduced on:	26 June 2013
Introduced by:	Alex Neil (Government Bill)
Passed:	04 February 2014
Royal Assent:	12 March 2014

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### **Passage of the Bill**

The Marriage and Civil Partnership (Scotland) Bill was introduced on 26 June 2013. The Equal Opportunities Committee was designated as lead committee. The Bill completed stage 1 on 20 November 2013, stage 2 on 17 January 2014 and was passed at stage 3 on 4 February.

### **Purpose and objectives of the Bill**

The purpose of the Bill is to make provision for the marriage of persons of the same sex. It also makes further provision regarding the persons who may solemnise marriage; marriage procedure and the places at which civil marriages may be solemnised. Provision would also be made for the registration of civil partnerships by celebrants of religious or belief bodies and gender change by married persons and civil partners.

### **Provisions of the Bill**

The main provisions of the Bill are to:

- introduce same sex marriage and the religious and belief registration of civil partnerships
- protect religious and belief celebrants who do not wish to solemnise same sex marriage
- provide an opt in procedure for religious and belief bodies who want to solemnise same sex marriage or register civil partnerships
- allow civil partnership to change to marriage
- allow civil marriage ceremonies to take place anywhere agreed by the registrar and the couple, other than religious premises
- establish belief marriage ceremonies

- remove the requirement for a couple to divorce before obtaining a full gender recognition certificate
- automatically authorise Church of Scotland deacons to solemnise opposite sex marriage; and,
- introduce the possibility of qualifying requirements for religious and belief bodies so that they can be authorised to solemnise marriage or register civil partnership, in light of increasing concerns over sham and forced marriages and marriages being carried out for profit or gain.

## **Parliamentary consideration**

SPICe briefings SB 13/51 and SB 14/10 provide more detail on the Bill as introduced and as amended at stage 2.

There were 77 amendments to the Bill lodged at stage 2 and a further 31 at stage 3. Members of the Scottish Parliament were allowed to consider this Bill as a matter of conscience and not along party lines. All Scottish Government amendments were agreed without division. One amendment by SNP Member Linda Fabiani was also passed. No other amendments were agreed to.

### ***Main changes to the Bill***

#### *Changing Civil Partnership to Marriage*

Following a recommendation by the Equal Opportunities Committee, and calls from stakeholders, Ministers now have the power to extend, by order, the categories of civil partnership which can change to marriage by undergoing a marriage ceremony in Scotland. This would enable civil partners in a partnership registered outwith Scotland to marry here. Clarification was also made so that persons changing their relationship from a civil partnership to a marriage will have the same rights and responsibilities regardless of whether the change occurs through a marriage ceremony or through the administrative route.

#### *Marriage ceremony*

Following a recommendation by the Equal Opportunities Committee concerning the language used in marriage declarations, the Scottish Government lodged an amendment to allow a gender neutral form of words to be used. Religious or belief bodies can use either gender specific or gender neutral language, or a mix of the two, depending on their beliefs and the couples' requirements.

#### *Transgender spousal consent and gender recognition*

Amendments to section 4 of the Gender Recognition Act 2004 ensures that a person who has spousal consent to stay in the marriage and a person in a civil partnership whose partner is transitioning on the same day can receive a full Gender Recognition Certificate (GRC).

Further amendments were agreed in order that a person who does not have written spousal consent for their gender recognition, and who therefore obtains only an interim gender recognition certificate from the UK Gender Recognition Panel (GRP), may then apply to the sheriff court to convert to a full certificate.

The role of the sheriff in the conversion would be purely administrative. The sheriff is required to notify the trans person's spouse that the application has been made and when it has been granted. The spouse is then permitted an indefinite right to apply for a non-contestable divorce. (This amendment only removes the need for spousal consent in Scotland.)

When gender recognition is granted, a revised marriage certificate would be issued only with the spouse's agreement. Continuity of the marriage would not be impacted by the issue of the full gender recognition certificate. As such, the spouse's financial, parental and other rights associated with the marriage would not be affected by the gender recognition.

A new addition was also made to Schedule 2 to the Bill which makes it possible for certain long-term transitioned persons to be able to apply to the GRP under a new "long term transitioned" process. There is a range of eligibility criteria to qualify for this process which would allow for simpler evidence requirements. This recognises the fact that those who have been living in their acquired gender in the long term may find it more difficult to assemble the evidence required by the GRP.

Provisions were also made for applications to the GRP for a full GRC in certain cases where the civil partner or spouse of a transgender person dies. The right of appeal to the Court of Session on a point of law against a decision by the panel to reject an application was also provided for.

#### *Reset*

The Bill repealed the defence for wives against the crime of reset (handling stolen goods).

#### ***Reviews that will influence future action by the Scottish Government***

The Equal Opportunities Committee noted in its stage 1 report that the Scottish Government plans to consider issues relating to reform of civil partnerships, including opposite-sex civil partnerships, in its [forthcoming consultation and review](#). The review is planned for completion in early 2015. The Committee also heard in evidence from the Cabinet Secretary that the UK Government is planning to conduct a review on the issue of survivor pension benefits relating to same sex couples. Section 16 of the Marriage (Same Sex Couples) Act 2013 outlines the terms of the review. The review will extend to Scotland and is expected to report in July 2014. It will inform the Scottish Government's approach to the public sector pension schemes which fall under its devolved responsibility.

#### ***Main areas of debate***

All topics highlighted below were raised in discussion at stage 1 as well as in various amendments at stages 2 and 3 of the Bill Scrutiny.

#### *Adequate protections for those who believe in a traditional view of marriage*

There was a range of proposed amendments to further protect the rights and freedom of speech for those who hold a traditional view of marriage. In particular, assurances were sought within the legislation to ensure that this belief was one that was 'worthy of respect in a democratic society'.

In relation to the public sector, it was viewed that the principle of 'reasonable accommodation' should be employed to protect civil registrars who do not wish to officiate at same sex marriages or public sector workers who may be asked to act against their conscience if they believe in traditional marriage. It was also proposed that public bodies should seek to make 'reasonable accommodation' for religious groups who believe in traditional marriage in order to allow those organisations to maintain their ethos while using public facilities or undertaking public contracts.

Members in opposition to these proposals drew a distinction between a registrar fulfilling a public function and a celebrant performing a religious function. They also highlighted the protections in the Equality Act 2010 which would mean that a public sector body discriminating against a person or body because of their beliefs would be unlawful. They also questioned why these particular groups and views needed to be singled out for special protections when the Equality Act offers overarching protections.

It was proposed that an amendment be made to ensure that views (for or against) same sex marriage cannot be taken into consideration during the process of approving prospective foster carers or adoptive parents. The Cabinet Secretary stated that he did not consider the amendment necessary as it is already the case that views on same-sex marriage cannot in and of themselves disqualify anyone from becoming a foster carer or an adoptive parent.

#### *No compulsion to conduct same sex marriage*

There was a desire to strengthen the existing wording in the Bill to protect religious or belief bodies from being "compelled by any means" to carry out same-sex marriages. It was envisaged that the phrase "by any means" should cover, for example, the hire of public premises not being made conditional on a religious body having registered to conduct same-sex marriages. The Cabinet Secretary considered the amendment to be unnecessary, referencing the protections that are already in place within the Bill to protect religious bodies and celebrants.

#### *Review of legislation*

There was a call for a review of the legislation after 5 years in order to establish whether it is operating as intended. Opponents argued that post-legislative scrutiny is a matter for parliamentary committees and that the review could potentially destabilise the impact of the Bill.

#### *Equality Act 2010*

It was proposed that the commencement of the same-sex marriage elements of the Bill should be conditional upon the Equality Act 2010 being amended to specify that the protected characteristic of religion or belief includes the belief in marriage as being between a man and a woman. As the Equality Act is a reserved matter this was deemed to be outwith the competence of the Scottish Parliament and potentially a wrecking amendment, as the suggested changes would be unlikely to be implemented by the UK Government.