

Marriage and Civil Partnership (Scotland) Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 6	Schedule 1
Sections 7 to 27	Schedule 2
Sections 28 to 33	Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 4

Alex Neil

- 1 In section 4, page 4, line 18, after <married> insert <or in a purported marriage>

Alex Neil

- 2 In section 4, page 4, line 19, after <marriage> insert <or purported marriage>

Alex Neil

- 3 In section 4, page 4, line 20, after <marriage> insert <or purported marriage>

Alex Neil

- 4 In section 4, page 4, line 25, at end insert—
<() may make different provision for different purposes,>

Alex Neil

- 5 In section 4, page 4, line 27, at end insert—
<() may modify any enactment (including this Act),>

Alex Neil

- 6 In section 4, page 4, line 28, after <is> insert <(except where subsection (9A) applies)>

Alex Neil

- 7 In section 4, page 4, line 28, at end insert—
<(9A) An order under subsection (8) which adds to, replaces or omits any part of the text of an Act is subject to the affirmative procedure.>

Section 5

Alex Neil

- 8 In section 5, page 5, leave out lines 20 to 22

After section 6

Alex Neil

- 9 After section 6, insert—

<Reset: abolition of defence

- (1) Any rule of law under which a wife who receives or conceals goods stolen by her husband does not commit the offence of reset ceases to apply.
- (2) Subsection (1) applies only in relation to things done after the day on which this section comes into force.>

Section 7

Marco Biagi

- 10 In section 7, page 6, line 1, leave out from <qualifying> to <5(6)> in line 2 and insert <civil partnership>

Marco Biagi

- 11 In section 7, page 6, line 4, at end insert—

<() in subsection (5), after paragraph (ii)(c) of the proviso (inserted by section 3(2)(c) of this Act), insert “; or

- (d) if no such certificate has been issued only by reason of the fact that the parties to the intended marriage have registered an overseas relationship which is treated in Scotland by virtue of Chapter 2 of Part 5 of the Civil Partnership Act 2004 as a civil partnership between them.”>

Marco Biagi

- 12 In section 7, page 6, line 6, leave out <qualifying>

Marco Biagi

- 13 In section 7, page 6, line 9, leave out from <<“qualifying> to end of line 20 and insert <civil partnership means—

- (a) a civil partnership registered under the law of any part of the United Kingdom; and
- (b) an overseas relationship which is treated in Scotland by virtue of Chapter 2 of Part 5 of the Civil Partnership Act 2004 as a civil partnership.”>

After section 7

Alex Neil

14 After section 7, insert—

<Power to modify meaning of “qualifying civil partnership”

- (1) The Scottish Ministers may by order modify the meaning of “qualifying civil partnership” given by section 5(6) of the 1977 Act (as inserted by section 7(3)(b) of this Act) so as to include civil partnerships registered outside Scotland.
- (2) An order under subsection (1)—
 - (a) may make different provision for different purposes,
 - (b) may include consequential, supplementary, incidental, transitional, transitory or saving provision,
 - (c) may modify any enactment (including this Act),
 - (d) is subject to the affirmative procedure.
- (3) Before laying a draft of an order under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult the following persons on a copy of the proposed draft order—
 - (a) the Registrar General of Births, Deaths and Marriages for Scotland, and
 - (b) such other persons as the Scottish Ministers consider appropriate.>

Section 8

Alex Neil

15 In section 8, page 6, leave out lines 37 and 38

Alex Neil

16 In section 8, page 7, line 6, at end insert—

<() may make different provision for different purposes,>

Marco Biagi

17 In section 8, page 7, line 13, leave out subsection (7) and insert—

- <(7) For the purposes of this section a “qualifying civil partnership” is a civil partnership which—
- (a) was registered in Scotland, and
 - (b) has not been dissolved, annulled or ended by death.
- (8) A civil partnership which was registered outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 of the 2004 Act is to be treated for the purposes of subsection (7)(a) as having been registered in Scotland if—
- (a) the parties to the civil partnership elected Scotland as the relevant part of the United Kingdom under the Order, and

- (b) details of the civil partnership have been sent to the Registrar General of Births, Deaths and Marriages for Scotland.>

Section 9

Alex Neil

- 19** In section 9, page 7, leave out lines 16 to 19 and insert—
- <(A1) This section applies where civil partners in a qualifying civil partnership (within the meaning of section 5(6) of the 1977 Act)—
 - (a) marry in accordance with that Act, or
 - (b) change their civil partnership into a marriage in accordance with provision made under section 8(1).
 - (1) Where this section applies—
 - (a) the qualifying civil partnership ends on the date on which—
 - (i) the marriage was solemnised, or
 - (ii) the change took effect, and>

Marco Biagi

- 18** In section 9, page 7, line 16, leave out <civil partners in a qualifying> and insert <two persons in a>

Marco Biagi

- 20** In section 9, page 7, line 18, leave out <qualifying>

Marco Biagi

- 21** In section 9, page 7, line 21, leave out <qualifying>

Marco Biagi

- 22** In section 9, page 7, line 21, at end insert <under the law of any part of the United Kingdom or the date on which the persons are treated in Scotland by virtue of Chapter 2 of Part 5 of the 2004 Act as having formed their civil partnership.>

Marco Biagi

- 23** In section 9, page 8, line 3, leave out <qualifying>

Marco Biagi

- 24** In section 9, page 8, line 7, leave out <qualifying>

Section 10

Alex Neil

- 25 In section 10, page 8, line 30, leave out <after “marriage” insert “between” and insert <for “marriages” substitute “marriage between”>

John Mason

- 38 In section 10, page 9, line 29, insert at end—
- <() For the avoidance of doubt—
- (a) no religious or belief body may be compelled by any means (including by the enforcement of a contract or a statutory or other legal requirement) to—
 - (i) make a request referred to in subsection (1C)(a);
 - (ii) nominate under section 9 any of its members to be registered as empowered to solemnise marriages between persons of the same sex;
 - (b) no person may be compelled by any means (including by the enforcement of a contract or a statutory or other legal requirement) to apply for temporary authorisation under section 12 to solemnise marriages between persons of the same sex.>

Section 11

Alex Neil

- 26 In section 11, page 11, line 6, after <sexes”,> insert—
- <() in paragraph (a), for the words from “witnesses,” to “wife;” substitute “witnesses—
- (i) that they accept each other as husband and wife;
 - (ii) that they accept each other in marriage; or
 - (iii) either or both of sub-paragraphs (i) and (ii);”,
- () in paragraph (b), for the words from “subsection,” to “wife,” substitute “subsection—
- (i) that the parties are then husband and wife;
 - (ii) that the parties are then married; or
 - (iii) either or both of sub-paragraphs (i) and (ii);”,>

After section 14

John Mason

- 39 After section 14, insert—

<Protecting expression of belief in marriage between persons of different sex

For the avoidance of doubt, a belief in marriage as a voluntary union between one man and one woman to the exclusion of all others for life is a belief worthy of respect in a democratic society.>

Siobhan McMahon

40 After section 14, insert—

<Same sex marriage: protection for district registrars

- (1) For the avoidance of doubt, nothing in this Act imposes a duty on a person mentioned in subsection (2)—
 - (a) to solemnise a marriage between persons of the same sex,
 - (b) to be present at or participate in a marriage between persons of the same sex,where the reason for not carrying out an activity mentioned in paragraph (a) or (b) is that the person holds the belief mentioned in subsection (3).
- (2) The person is a district registrar or assistant registrar appointed under section 17 of the 1977 Act.
- (3) The belief is that marriage may only be between one man and one woman.>

Siobhan McMahon

41 After section 14, insert—

<Protection of freedom of expression: public authority employees

- (1) A public authority must take steps to ensure that, in carrying out its functions, the belief of an employee of the authority mentioned in subsection (3) is respected.
- (2) For the avoidance of doubt, where a public authority offers services, no employee is under a duty to—
 - (a) provide such services,
 - (b) assist in the provision of such services,where the reason for not so providing or assisting is that the employee holds the belief mentioned in subsection (3).
- (3) The belief is that marriage may only be between one man and one woman.
- (4) For the purposes of subsection (1), a public authority is a body listed in schedule 1 to the Freedom of Information (Scotland) Act 2002.>

Siobhan McMahon

42 After section 14, insert—

<Protection of freedom of expression: public authority functions

- (1) For the avoidance of doubt, a public authority must not—
 - (a) withhold a service or the use of a facility from a person,
 - (b) terminate the provision of a service to, or the use of a facility by, a person,

(c) alter the terms on which a service is provided, or a facility is used, to the detriment of the person,

where the reason for taking the action mentioned in paragraph (a), (b) or (c) is that the person holds the belief mentioned in subsection (2).

- (2) The belief is that marriage may only be between one man and one woman.
- (3) For the purposes of subsection (1), a public authority is a body listed in schedule 1 to the Freedom of Information (Scotland) Act 2002.>

Richard Lyle

43 After section 14, insert—

<Protection of freedom of expression: adoption and fostering

- (1) For the avoidance of doubt, the views of a relevant person on whether marriage may be between persons of the same sex may not be considered—
- (a) by an adoption agency when considering whether to approve a person as an adopter under or by virtue of the Adoption and Children (Scotland) Act 2007,
- (b) by a court in coming to a decision relating to the adoption of a child under or by virtue of the Adoption and Children (Scotland) Act 2007,
- (c) by a local authority when considering whether to approve a person as a foster carer under the Looked After Children (Scotland) Regulations 2009.
- (2) For the purposes of subsection (1) a “relevant person”—
- (a) under paragraph (a) and (b) is a prospective adopter,
- (b) under paragraph (c) is a prospective foster carer.>

Richard Lyle

44 After section 14, insert—

<Same sex marriage: protection of charitable status

In section 8 of the Charities and Trustee Investment (Scotland) Act 2005 (public benefit), after subsection (2) insert—

- “(2A) For the avoidance of doubt, a disbenefit is not incurred or likely to be incurred by the public in consequence of a body holding a belief as mentioned in subsection (2B).
- (2B) The belief is that marriage may only be between one man and one woman.”>

Richard Lyle

45 After section 14, insert—

<Protection of freedom of expression: threatening or abusive behaviour

- (1) The Criminal Justice and Licensing Act (Scotland) 2010 is amended as follows.
- (2) In section 38, after subsection (3) insert—
- “(3A) For the avoidance of doubt, any discussion or criticism of marriage which concerns the sex of the parties to marriage must not be taken of itself to be an offence under subsection (1).”>

Richard Lyle

46 After section 14, insert—

<Protection of freedom of expression: offensive behaviour at regulated football matches

- (1) The Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 is amended as follows.
- (2) In section 1, after subsection (5) insert—
 - “(5A) For the avoidance of doubt, any discussion or criticism of marriage which concerns the sex of the parties to marriage must not be taken of itself to be an offence under subsection (1).”.>

Alex Johnstone

47 After section 14, insert—

<Indemnification of losses arising from certain legal proceedings

- (1) This section applies where any relevant legal proceedings are brought against a person (“person A”) by or on behalf of another person (“person B”).
- (2) The Scottish Ministers must indemnify person A against any net financial losses incurred by person A as a result of the relevant legal proceedings.
- (3) For the purposes of subsection (2), person A’s net financial losses are to be calculated by—
 - (a) adding together—
 - (i) the amount paid by person A in respect of person A’s own legal costs in connection with the relevant legal proceedings,
 - (ii) any other costs incurred by person A as a direct result of the relevant legal proceedings, and
 - (iii) any sums which person A has been ordered to pay to person B as a result of the relevant legal proceedings, and
 - (b) subtracting from the total obtained under paragraph (a) any sums which person B has been ordered to pay person A as a result of the relevant legal proceedings.
- (4) In this section, “relevant legal proceedings” means any legal proceedings arising from a claim that person A has discriminated against another person by virtue of person A holding or acting on the belief that marriage may only be between one man and one woman.”.>

Section 21

Alex Neil

27 In section 21, page 16, line 8, at end insert—

- <() In subsection (1), before paragraph (a) insert—
“(za) an action for declarator of marriage;”.>

After section 21

John Mason

48 After section 21, insert—

<CHAPTER

REVIEW OF SAME SEX MARRIAGE

Review of effect of same sex marriage

- (1) The Scottish Ministers must, before the end of the 5 year period, review—
 - (a) the effects of the introduction of marriage of persons of the same sex (“same sex marriage”),
 - (b) the operation of the provisions on same sex marriage in this Act,and lay before the Scottish Parliament a report of the review.
- (2) The review must, in particular, consider—
 - (a) the operation and effect of section 8(1D) of the 1977 Act (inserted by section 10(2)(b) of this Act),
 - (b) the operation and effect of section 14 of this Act,
 - (c) any court proceedings relating to the operation or effect of any provision relating to same sex marriage.
- (3) In carrying out a review under this section, the Scottish Ministers must consult such persons as they consider appropriate.
- (4) The Scottish Ministers must, as soon as practicable after the report has been laid before the Parliament, publish the report in such manner as they consider appropriate.
- (5) In this section—

“court proceedings” includes proceedings of—

 - (a) an employment tribunal within the meaning of section 1 of the Employment Tribunal Act 1996,
 - (b) an Employment Appeal Tribunal within the meaning of section 20 of the Employment Tribunal Act 1996,
 - (b) the European Court of Human Rights,
 - (c) the European Court of Justice,

“the 5 year period” means the period of 5 years beginning with the day on which any provision relating to same sex marriage comes into force.>

Schedule 2

Alex Neil

28 In schedule 2, page 42, line 13, leave out <Registrar General for Scotland> and insert <following persons on a copy of the proposed draft order—

- (a) the Registrar General for Scotland,
- (b) the Gender Recognition Panel, and

(c) such other persons as the Scottish Ministers consider appropriate>

Alex Neil

29 In schedule 2, page 42, line 20, after <spouse> insert <or civil partner>

Alex Neil

30 In schedule 2, page 42, leave out line 31

Alex Neil

31 In schedule 2, page 42, line 37, at end insert—

<() Regulations under sub-paragraph (1) may in particular make provision for fees to be payable in respect of things done under the regulations.>

Alex Neil

32 In schedule 2, page 42, line 37, at end insert—

<() Regulations under sub-paragraph (1) may make different provision for different cases or circumstances.>

Alex Neil

33 In schedule 2, page 43, line 31, after <20A> insert <of Schedule 3>

Alex Neil

34 In schedule 2, page 43, line 33, leave out from <which> to <Act> in line 34

Section 28

Alex Neil

35 In section 28, page 30, leave out lines 29 and 30

After section 29

Alex Neil

36 After section 29, insert—

<Form of register of marriages

In section 54 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (regulations), after subsection (1) insert—

“(1A) Regulations prescribing the form of a register of marriages under section 32 may make different provision for different cases or circumstances.”>

Section 31

Alex Neil

37 In section 31, page 31, line 28, at end insert—

<() An order under subsection (1) may make different provision for different purposes.>

Section 32

John Mason

49* In section 32, page 32, line 2, at end insert—

<(2A) The day appointed for the provisions for the marriage of persons of the same sex to come into force must be a day after the day when amendments to the Equality Act 2010 to give effect to the amendments mentioned in subsection (2B) have been or are being brought into force.

(2B) The amendments are—

(a) in section 10 (religion or belief), after subsection (3), insert—

“(3A) For the avoidance of doubt, the protected characteristic of religion or belief may include a belief that marriage may only be between a man and a woman.”,

(b) in section 149 (public sector equality duty), after subsection (9), insert—

“(9A) Compliance with the duties in this section requires ensuring that a belief that marriage may only be between a man and a woman is respected and that no person may suffer any detriment as a result of holding or expressing such a belief.”.>

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