



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EQUAL OPPORTUNITIES COMMITTEE

Thursday 24 September 2015

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EQUAL OPPORTUNITIES COMMITTEE

16th Meeting 2015, Session 4

CONVENER

*Margaret McCulloch (Central Scotland) (Lab)

DEPUTY CONVENER

*Sandra White (Glasgow Kelvin) (SNP)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)

*John Finnie (Highlands and Islands) (Ind)

*Annabel Goldie (West Scotland) (Con)

*John Mason (Glasgow Shettleston) (SNP)

*Drew Smith (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Marco Biagi (Minister for Local Government and Community Empowerment)

Simon Stockwell (Scottish Government)

CLERK TO THE COMMITTEE

Ruth McGill

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equal Opportunities Committee

Thursday 24 September 2015

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Margaret McCulloch): Welcome to the Equal Opportunities Committee's 16th meeting in 2015. Please set any electronic devices to flight mode or switch them off.

I start with introductions. We are supported at the table by clerking and research staff, an official reporter, broadcasting services and, around the room, by the security office. My name is Margaret McCulloch and I am the committee's convener. Members will now introduce themselves.

Sandra White (Glasgow Kelvin) (SNP): I am the MSP for Glasgow Kelvin and the deputy convener.

John Finnie (Highlands and Islands) (Ind): Madainn mhath. I am an MSP for the Highlands and Islands.

Annabel Goldie (West Scotland) (Con): I am an MSP for West Scotland.

Drew Smith (Glasgow) (Lab): I am an MSP for Glasgow.

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

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

The Convener: Thank you.

The first agenda item is a decision on taking business in private. Do we agree to take in private item 4, which is consideration of a draft report on our inquiry into age and social isolation, and item 5, which is consideration of our work programme?

Members *indicated agreement.*

Subordinate Legislation

Qualifying Civil Partnership Modification (Scotland) Order 2015 [Draft]

09:32

The Convener: Agenda item 2 is evidence from the Minister for Local Government and Community Empowerment on the draft Qualifying Civil Partnership Modification (Scotland) Order 2015. The draft order has been laid under the affirmative procedure, which means that the Parliament must approve it before its provisions may come into force. Following the evidence taking, the committee will be invited to consider a motion to approve the draft order under agenda item 3.

I welcome the minister and his accompanying officials and I invite the minister to make some opening remarks.

The Minister for Local Government and Community Empowerment (Marco Biagi): It is a pleasure to be back here at the Equal Opportunities Committee to outline what the draft order will do and to ask the committee to recommend it.

I clarify that the consultation that was announced to some fanfare two days ago and the draft order cover two separate issues. The draft order will allow people who are in a same-sex civil partnership that was registered outwith Scotland to marry here. The consultation is on the future of civil partnerships in Scotland generally. Any legislation following that consultation would be some way off and could not be introduced in this parliamentary session.

The draft order will amend the definition of "qualifying civil partnership" in the Marriage and Civil Partnership (Scotland) Act 2014. That amendment will mean that couples who are in a civil partnership that was registered in England, Wales or Northern Ireland and couples who are in a civil partnership that was registered in an overseas jurisdiction could, if they wish, change their relationship to marriage in Scotland, through having a marriage ceremony.

The draft order also provides that under Scots law the couples are to be treated as married from the date when they first registered their relationship or from 5 December 2005, if that date is later. The reason for that date is that that was when same-sex relationships were first given legal recognition in Scotland, through the Civil Partnership Act 2004.

We have laid a separate Scottish statutory instrument, which is not subject to parliamentary procedure, which will make some minor changes

to the marriage notice form to reflect that, in future, couples in a same-sex civil partnership that was registered outwith Scotland will be able to marry here.

The committee's stage 1 report on the Marriage and Civil Partnership (Scotland) Bill recommended that there should be provision so that couples in a civil partnership that was registered outwith Scotland could change their relationship into marriage here. There was a vigorous debate in the committee on amendments at stage 2, after which the Government amendment was eventually accepted. I entirely accept that it has taken the Government—us—longer to lay the draft order than we would have liked.

Last year, we were busy implementing a range of components of the 2014 act so that, in particular, the first same-sex marriages could take place in Scotland in 2014. This year, we have carried out two consultations on the provision that is now in front of you. The first consultation was on the general principles. The second, in line with section 9 of the 2014 act, was on a draft of the order. As the policy note indicates, we took a number of steps following those consultations. We are preparing guidance for registrars, and we have prepared guidance for couples and dealt with the transitional issues.

The draft order forms part of our continuing work more widely to implement the 2014 act. Other work to implement that act includes the consultation to which I referred and our plan to consult on qualifying requirements for religious and belief bodies to meet before they can solemnise marriage or register a civil partnership. That will require very careful and close consultation with religious and belief bodies in particular.

We continue to work with the Equality Network and the Scottish Transgender Alliance on regulations about the registration of marriages and civil partnerships following gender recognition, and we are preparing an order on alternative evidence, such as hormonal treatment, to be accepted by the gender recognition panel in cases in which a person transitioned to an acquired gender some time ago and seeks recognition thereof.

The Government also promised to consider further the issue of the age at which people can obtain gender recognition. We are still considering that. Any changes in that area would definitely require primary legislation. A key issue is ensuring that sufficient support is available for young people in that situation. The Equality Network and the Scottish Transgender Alliance have an equal recognition campaign that covers a wide range of areas, of which that is one. The Government will consider what response we should make to that

campaign, including on the question of the age at which gender recognition can be obtained.

In conclusion, the draft order helps to further the implementation of the 2014 act. It is a further step towards equality and is in line with what the committee wished at stage 2. I invite the committee to recommend that the order be approved.

The Convener: Thank you for that information, minister. Do members have questions for the minister?

John Mason: Will you clarify something, minister? I understand that there are two potential routes if a civil partnership in Scotland is to be changed into a marriage: the marriage ceremony and the administrative process. However, if a civil partnership is from overseas, there has to be a marriage ceremony; the administrative process cannot be used. Why is that the case?

Marco Biagi: The administrative process takes advantage of the access that we currently have under the registers to whether the couple has already been verified under Scots law as having gone through the processes involved. That initial check would have ensured checking things such as closeness of relationship and that the relationship was true. We do not have ready access to that information—certainly not rapid access to it—if the relationship was entered into abroad. On consideration, we felt that the longer the timescales, the greater scrutiny of the process was more appropriate. It will nonetheless allow people in Scotland who have come from abroad to change their civil partnership into marriage.

The ceremonial route can be rather limited. There is no requirement to splash out on a great wedding in a castle, but it nonetheless provides those safeguards more adequately.

John Mason: I accept that the marriage ceremony can be quite simple, but would there be a cost difference in that?

Marco Biagi: I will refer to an official on the costs.

Simon Stockwell (Scottish Government): People can have a civil marriage ceremony in Scotland for £125. That is more expensive than the administrative route for changing a civil partnership to a marriage. That is free for the first year. After the first year, the cost will be £30.

John Mason: Right. Does that include any checks that have to be done on the closeness of the relationship and the things that the minister talked about?

Simon Stockwell: Yes. As the minister said, those checks will have been done when the couple entered the civil partnership because the

provisions relating to whether people are too closely related apply to civil partnerships as well as to marriage. There is more work for a registrar to do when they are confronted with a couple whom they have not dealt with before in checking whether they know what they are doing, whether they are over age, whether they are both in a position to get married, and whether there is not another marriage somewhere else, for example. A registrar needs to go through a number of such checks to ensure that people are eligible to marry in Scotland.

John Mason: Okay. Thank you.

Christian Allard: We all welcome the order, of course. Some of us voted for the amendment, and the order is quite welcome out there as far as we can see.

I would like to know about the number of couples who may wish to take up the proposal. Will the uptake be quite slow? Do you have any idea of the numbers and their financial implications?

Marco Biagi: It is hard to tell exactly, because we do not have a register of everybody who has entered a relationship abroad and is now living in Scotland. We are not a database state. We do know, however, that particular couples have been in regular contact with campaigning organisations and the Scottish Government to highlight the anomaly, and there is clearly a category of individuals that we want to provide the opportunity to.

The opportunity may well be taken up by a relatively small number of couples, but the alternative is that those people divorce or dissolve their civil partnership in Scots law, with all that that entails, so that they can marry, or that they go to their home jurisdiction and do the exchange, although that may not even be possible because their home jurisdiction may not offer same-sex marriage. By “home jurisdiction”, I mean the jurisdiction where they took out the relationship; they may well now consider Scotland to be their home. When we consider all that, there is an injustice here that needs to be dealt with and an equality that needs to be delivered.

Annabel Goldie: Minister, this is less a specific question and more a general observation on drafting. I am clear about the policy intention and I rely on the advice of our clerk and the contribution from the Parliament’s Delegated Powers and Law Reform Committee to keep us right, but in all honesty, when I look at the draft order, I do not have a clue whether it does what it is supposed to do. My question is about general draftsmanship. Is this really the only way in which we can draft a statutory instrument—by making a series of

references to existing statutes and simply substituting or deleting provisions?

Marco Biagi: I think that we are getting into a very wide question about draftsmanship. I could be uncharitable and point to the Scotland Act 1998—a piece of legislation that everybody in this Parliament is familiar with, many parts of which now resemble its original version only tangentially, having had things bolted into it. There is always a point where legislation that has been amended very often is revisited and consolidated with a new act.

However, the process is fairly common and the habit is to be able to provide the act as it is in force, and to be able to provide that online. The order that implements the changes may be quite complicated. I think that we have both served on the Subordinate Legislation Committee, so we appreciate the complexity—

Annabel Goldie: Thankfully, minister, I never served on that committee.

Marco Biagi: Never?

Annabel Goldie: That is probably why I still have a degree of sanity today. *[Laughter.]*

Marco Biagi: Well, there you go. My apologies for that slight on your character, if you took it as such. I certainly spent some time on that committee and I appreciate the issue.

The draft order makes changes that will then be reflected in the legislation as amended and presented in that way.

Simon Stockwell: We have a programme of work with the Scottish Law Commission to look at possible candidates for the consolidation of legislation. I and colleagues had a meeting with it a couple of weeks ago, not about the Marriage (Scotland) Act 1977 but about a different area of family law. We can certainly add the 1977 act to the list of areas that the Scottish Law Commission might want to look at for the consolidation of legislation in due course.

Marco Biagi: I am sure that the convener of the Justice Committee will be thrilled to hear that, when she does.

If we think about the entire process, the Marriage and Civil Partnership (Scotland) Act 2014 was largely—indeed, possibly entirely—an amendment to the 1977 act, and many other acts since then have been similar. That is simply the nature of our statute-based system.

Annabel Goldie: Convener, I thank the minister for his tolerance.

The Convener: I have a quick question about individuals whose civil partnerships were conducted outwith Scotland in countries where

Scotland's marriage is not recognised. When those individuals are going through the marriage ceremony here, will it be identified and highlighted to them that, although they will be married and recognised in Scotland, their marriage may not be recognised in their home country?

10:45

Marco Biagi: Yes. One of the big concerns about the option, as indeed with any aspect of cross-border family law, is that when people move from one country to another, a relationship that they entered in the first country may not be recognised or may be recognised differently. For example, with the French *pacte civil de solidarité*, or PACS, if a same-sex couple undertake that while in France, they will gain one set of rights, but if they then come to the United Kingdom, it is recognised as a civil partnership, which actually has greater rights. Whenever there is cross-border movement in this field, it creates complications.

Our approach has been to prepare the guidance note for couples, which stresses the importance of establishing the implications for them in the jurisdictions that they have concern about. The note also highlights the possibility of taking legal advice on the matter, because the situation between certain jurisdictions will be very complicated. If people have moved from another jurisdiction and intend to spend the rest of their life in Scotland, the process is eminently straightforward and highly desirable, based on what we have heard from such couples, but where there is fluidity between countries, there are complications, just as there are with any cross-border movement, especially in relation to same-sex marriage, which is recognised in a variable way.

The Convener: That is fine. People are made aware of those issues.

Marco Biagi: Yes. We have taken time to develop the guidance that will go to couples and the extra advice in the registrars handbook, to ensure that they can advise couples as well. We can provide the information and perhaps some individuals will not take enough note of it, but we are doing everything that we can to ensure that the point is underlined, because we do not want anybody to find themselves in that situation accidentally.

The Convener: As there are no further questions, we move on to agenda item 3, which is formal consideration of motion S4M-14271. I invite the minister to speak to and move the motion.

Marco Biagi: I have already spoken in favour, so I will happily just move the motion.

I move,

That the Equal Opportunities Committee recommends that the Qualifying Civil Partnership Modification (Scotland) Order 2015 [draft] be approved.

Motion agreed to.

The Convener: That concludes consideration of the affirmative instrument. We will report the outcome of our consideration to the Parliament. I thank the minister and colleagues for their participation.

That concludes the public part of the meeting. Our next meeting will take place on Thursday 1 October.

09:47

Meeting continued in private until 11:34.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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