



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EQUAL OPPORTUNITIES COMMITTEE

Thursday 30 May 2013

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EQUAL OPPORTUNITIES COMMITTEE

17th Meeting 2013, Session 4

CONVENER

*Mary Fee (West 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:

Felicity Cullen (Scottish Government)

Julia McCombie (Scottish Government)

Alex Neil (Cabinet Secretary for Health and Wellbeing)

Simon Stockwell (Scottish Government)

CLERK TO THE COMMITTEE

Douglas Thornton

LOCATION

Committee Room 4

Scottish Parliament

Equal Opportunities Committee

Thursday 30 May 2013

[The Convener *opened the meeting at 09:30*]

Marriage (Same Sex Couples) Bill

The Convener (Mary Fee): Good morning everyone, and welcome to the Equal Opportunities Committee's 17th meeting in 2013. I remind everyone to either switch off electronic devices or set them to flight mode. At the table, along with members and witnesses, are the clerking and research teams, the official reporters and broadcasting services. Around the room, we are supported by the security office.

My name is Mary Fee, and I am the committee's convener. I ask other committee members to introduce themselves in turn.

Marco Biagi (Edinburgh Central) (SNP): I am the member of the Scottish Parliament for Edinburgh Central, and deputy convener of the committee.

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

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

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.

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

The Convener: Agenda item 1 is ministerial evidence on legislative consent memorandum (S4) 23.1 on the Marriage (Same Sex Couples) Bill, which is United Kingdom Parliament legislation.

I welcome our witnesses, and invite them to introduce themselves.

The Cabinet Secretary for Health and Wellbeing (Alex Neil): I am the Cabinet Secretary for Health and Wellbeing. I will let the members of my team introduce themselves.

Simon Stockwell (Scottish Government): I am from the family and property law team in the Scottish Government.

Julia McCombie (Scottish Government): I am from the family and property law team in the Scottish Government.

Felicity Cullen (Scottish Government): I am from the Scottish Government legal directorate.

The Convener: Thank you. I invite the cabinet secretary to make a few opening remarks.

Alex Neil: Thank you, convener—I will make a few brief remarks. The legislative consent motion will seek approval for the UK Parliament to legislate on devolved matters in the Marriage (Same Sex Couples) Bill. The bill was introduced to the UK Parliament on 24 January 2013. It has recently completed its passage through the House of Commons, and is due to have its second reading in the House of Lords on 3 June.

The bill introduces same-sex marriage in England and Wales, and will allow individuals to change their legal gender without having to divorce. Marriage law and personal status are devolved matters and, as the committee knows, the Scottish Government is due to introduce its own bill shortly to legislate for same-sex marriage in Scotland.

However, the UK bill has some impact on Scotland in relation to devolved matters. The LCM covers a number of areas, and includes provisions to allow English and Welsh same-sex marriages to be recognised as civil partnerships in Scotland. If Scotland introduces same-sex marriage, we will recognise English and Welsh and overseas same-sex marriages as marriages, but there is likely to be an interim period after the UK bill is passed but before the Scottish bill is passed. To reflect that, the UK bill allows persons who married in England and Wales or overseas, but who might now live in Scotland, to stay married and obtain a full gender recognition certificate.

As a major objective, the bill seeks to ensure that the provisions on fraud and errors in gender recognition certificates will be kept as consistent as possible across the UK.

To allow for provision on marriage overseas, the bill proposes the repeal of the Foreign Marriage Act 1892 and its replacement by a power to make orders in council in relation to armed forces and consular marriages overseas. It also provides for the power to make orders containing consequential provisions.

We have identified no significant costs for the proposals, and I invite the committee to agree to support the LCM for the UK Marriage (Same Sex Couples) Bill. I am happy to take questions.

The Convener: Thank you, cabinet secretary.

Marco Biagi has some questions on pensions but may move on to a couple of other areas; John Finnie will then ask some questions on transitional arrangements.

Marco Biagi: Paragraph 12 of the memorandum refers to the order-making power that

“would allow appropriate provision on state pensions to be made for Scotland.”

Can you elaborate on that and on how much autonomy we would have over pension arrangements after the UK bill is passed?

Alex Neil: Under current constitutional arrangements, pensions are a reserved matter. The bill covers both reserved and devolved matters, so we want complete clarity for people who may be affected by its provisions, to ensure, for example, that if a same-sex couple get married or in the case of a gender change without a divorce, the United Kingdom Government will be able to make the necessary provisions in relation to pensions. The Scottish Government has no direct responsibility for state pensions at the moment, but there may be aspects of the bill that would impact on the provision of public services in Scotland. For example, some schemes run on behalf of the Scottish Government have a proxy qualification in relation to pension credit, and one of the qualifying criteria for certain types of energy assistance in Scotland is that a person must be in receipt of a pension credit or similar benefit. The bill therefore allows the UK Government to make any necessary adjustments to legislation that may impact on devolved areas of responsibility.

Marco Biagi: The main distinction would be that the UK Government could tailor it to fit in with passported benefits.

Alex Neil: Exactly.

Marco Biagi: There is a perceived inequality in survivor benefits between marriage and civil partnership. Do you envisage the UK Government addressing that or allowing Scotland to address it through the order-making power?

Alex Neil: For reserved matters such as pensions, the UK Government would be required, under the current constitutional arrangements, to make those provisions, because we have no powers at the moment in relation to state pensions, or indeed to occupational or private pensions.

The Convener: Paragraph 11 of the legislative consent memorandum states that

“where a woman is entitled to a state pension based on her husband’s National Insurance contributions, this entitlement will remain even if her husband changes gender.”

If it is the woman in the relationship who changes gender, what will the provision be?

Alex Neil: The underlying principle that the UK Government is trying to follow is that, irrespective of which partner changes gender, the entitlement

that they would have had prior to that change of gender will remain the same.

The Convener: That is helpful, because the paragraph in the LCM leads one to believe that that applies only to a woman, and that it would have to be the man who would change.

Alex Neil: Obviously, either the husband or the wife could change gender. Either way, the underlying principle must be that the other partner would not lose any entitlement as a result of their partner’s change of gender.

The Convener: Thank you for clarifying that.

Marco Biagi: I also have questions about the relationship between the UK legislation and the proposed Scottish legislation. Am I correct in understanding that, in devolved marriage and civil partnership law, the status quo is essentially being extended—at the moment, if someone has a same-sex marriage in Massachusetts, it is recognised as a civil partnership in Scotland, and after the bill is passed, a same-sex marriage in England will be recognised in the same way in Scotland as a civil partnership—so that the decision on same-sex marriage therefore remains with this Parliament through the proposed legislation?

Alex Neil: The part of the bill that we are considering today deals primarily with an interim situation. On current timescales, the UK bill is likely to become law around October, but it is not likely that the Scottish bill will become law until after October, so there will be a transitional period during which the UK bill will have been passed into law but the Scottish bill will not. The purpose of the provision before us is to deal with that situation, so that if a same-sex couple who have been married in England and Wales move to Scotland during that interim period, they will be recognised as having been in a civil partnership. When the Scottish bill is passed—assuming that it is passed—their relationship status will then change from civil partnership to same-sex marriage.

Marco Biagi: Does our legislation depend in any other way on the passage of the UK bill?

Alex Neil: Outwith the amendments to the Equality Act 2010, no. As you know, we announced our intention to introduce the legislation before the UK Government decided in principle to introduce it. It is clear that our legislation is not particularly dependent on any provisions. However, we have lodged the LCM to deal not just with the interim situation but with reserved matters such as pensions. It makes sense to have clarity so that anyone who is involved in a same-sex marriage or in gender change, north or south of the border, is very clear about the legal situation as it affects, say, pensions.

Alex Johnstone: With regard to the other half of that subject, I seek the minister's reassurances that our passing this LCM does not require or presume the passage of Scottish legislation. If for any reason the Scottish legislation did not take place, could what we are passing effectively become permanent?

Alex Neil: Under the LCM, if the Scottish bill was not passed, a same-sex marriage south of the border would, if the people involved moved north of the border, be regarded in Scotland as a civil partnership on a permanent basis.

Alex Johnstone: But there is no conditionality in the LCM.

Alex Neil: None at all.

Alex Johnstone: And no presumption about what is going to happen.

Alex Neil: There is also no time limit on the LCM. That part of the LCM will be superseded only if the Scottish Parliament passes the Scottish bill.

The Convener: John Mason has a supplementary on that point.

John Mason: On the relationship between the Scottish legislation and the UK legislation, am I right in saying that the Scottish legislation depends on the UK legislation amending the Equality Act 2010 and that problems would arise if the 2010 act were not amended and we went ahead with our legislation?

Alex Neil: I make it absolutely clear that that is separate to and has nothing to do with the LCM. When we announced our intention to introduce legislation on same-sex marriage in Scotland, we made it absolutely clear that we would do so only if we got agreement in principle from the UK Government to amend the UK Equality Act 2010, which is a reserved matter, to protect celebrants, churches and so on that did not want to participate in same-sex marriages or did not approve of them in religious terms. We have said that the amendment must be in situ in law before we activate our bill, if it is passed. However, that is entirely separate from the LCM process. That was decided and announced in principle long before the UK Government indicated its intention to introduce a same-sex marriage bill.

John Mason: That is great. It is useful to have that on the record.

Marco Biagi: I was going to ask the same question but, for absolute clarity, can you confirm that there will be, in essence, two Westminster bills—the Marriage (Same Sex Couples) Bill and a bill covering the amendment to the Equality Act 2010? Are they two completely distinct legislative entities?

Alex Neil: Simon Stockwell will correct me if I am wrong, but I think that the amendments to the 2010 act are incorporated in the Marriage (Same Sex Couples) Bill. However, I defer to Simon on that.

Simon Stockwell: The intention is that, once the Scottish bill is passed, a separate order under section 104 of the Scotland Act 1998 will be introduced to cover Scottish amendments to the Equality Act 2010 and perhaps a number of other points. As the minister has made clear, we would not commence the relevant provision of the Scottish bill on same-sex marriage until the section 104 order had gone through Westminster.

John Finnie: Paragraph 29 of the memorandum seems to acknowledge a certain amount of uncertainty over whether any

“transitional, transitory, saving or consequential”

provisions would arise. Having dealt with legislation in my previous job, I think that it would be unusual for such issues not to arise in the move from one set of legislation to another. If such issues emerged, how would they be responded to?

09:45

Alex Neil: That is a fairly typical provision that is made in almost any bill so that if circumstances change—requiring consequential changes by order to the legislation—we have the powers to make those changes. Take the pensions issue, for example, and suppose that the Government made further changes to pension legislation that then required some of the precise provisions to be amended. The provision would allow those amendments to take place.

In other words, it is not because of uncertainty that exists today; it is to cater for any future changes that have a consequential impact on the legislation, so that we do not need to revert to primary legislation to make any necessary changes. We do that daily in this Parliament—every legislature does that—and it is a common provision in any bill. It allows us, if circumstances change, to make the necessary detailed changes by order or regulation to the legislation.

For example, there is a big debate about women's entitlement to pension rights in our country. There is a view that we should do what they do in New Zealand, whereby if a woman has been resident in the country for 10 years, she is automatically entitled to a full pension. That is not the law in the UK, but if a future UK Government or—after a yes vote next year—a Scottish Government passed legislation to that effect, that could have an impact on the detail of this legislation.

Paragraph 29 of the memorandum would allow us to make the necessary changes to the legislation without having to revert to primary legislation. In other words, we are constrained by the main provisions of the act. We cannot make changes willy-nilly—they must relate to the provisions in the act. I hope that that is a reasonable explanation.

The Convener: As committee members have no further questions for the cabinet secretary or our other witnesses, is the committee content to recommend that the LCM be approved?

Members *indicated agreement.*

The Convener: Thank you. The clerks will prepare a report reflecting our decision. I thank the cabinet secretary and the other witnesses for coming along.

Alex Neil: I thank you, convener, and the committee for your courtesy, time and support.

09:47

Meeting suspended.

09:55

On resuming—

Annual Report

The Convener: Agenda item 2 is consideration of our draft annual report for 2012-13. Paper 2 sets out a draft of the report, which I invite members to agree. A few changes will be made to paragraph 7 so that a Gypsy Traveller site that was missed out can be included.

Christian Allard: I was not a member of the committee at that stage, of course. I am pleased that the Equal Opportunities Committee uses concise and plain English in its reports. I am a great supporter of plain English, for obvious reasons.

The Convener: Good; we like plain English.

Siobhan McMahon: Will the chamber debates that we have had be included? You mentioned changes. Is this week's debate outwith the period of the report?

The Convener: Yes.

Siobhan McMahon: Did we have another debate—or was that included in last year's report?

The Convener: We had the chamber debate on women and work last June.

John Mason: Yes, it was in June—that is mentioned in the report.

The Convener: Is the committee happy to agree the draft report with the one small change at paragraph 7 that I described?

Members *indicated agreement.*

Marco Biagi: May I ask when the report will go online?

Douglas Thornton (Clerk): The reports are all published at the same time; we believe that it will be next week.

The Convener: That concludes today's meeting. Our next meeting, which will take place on Thursday 6 June, will be held in private as it will include consideration of a draft report on our women and work inquiry.

Meeting closed at 09:57.

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