

THE REGISTRATION OF CIVIL PARTNERSHIPS SAME SEX MARRIAGE

Annex E: RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

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3. Permissions - I am responding as...

Individual / Group/Organisation
Please tick as appropriate

<p>(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?</p> <p><i>Please tick as appropriate</i> <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>(c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).</p>
<p>(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis</p> <p><i>Please tick ONE of the following boxes</i></p> <p>Yes, make my response, name and address all available <input type="checkbox"/></p> <p style="text-align: center;"><i>or</i></p> <p>Yes, make my response available, but not my name and address <input type="checkbox"/></p> <p style="text-align: center;"><i>or</i></p> <p>Yes, make my response and name available, but not my address <input type="checkbox"/></p>	<p>Are you content for your response to be made available?</p> <p><i>Please tick as appropriate</i> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?</p> <p><i>Please tick as appropriate</i> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	

CONSULTATION QUESTIONS

The registration of civil partnerships

Question 1 (Paragraphs 2.12 and 2.13)

Do you agree that legislation should be changed so that civil partnerships could be registered through religious ceremonies?

Yes
No
Don't know

Please give reasons for your answer.

The Scottish Transgender Alliance (STA) is the only national transgender-specific equality project currently funded in Scotland. It is based within the Equality Network and works in close partnership with the Equality Network LGBT Policy project. The Scottish Transgender Alliance (STA) works for full equality and human rights for people of all sex, gender, gender identity and gender reassignment diversity. The Scottish Transgender Alliance recognises and strives to include the fullest diversity of identities and experiences within its equality and human rights work, including transsexual women, transsexual men, intersex people, cross-dressing/transvestite people, and other nonbinary people (who do not have binary (male or female) gender identities and instead self-identify with various terms such as androgyne, polygender, genderqueer or nongendered). The Scottish Transgender Alliance welcomes the opportunity to respond to this consultation.

To inform this consultation response the Scottish Transgender Alliance has consulted, both during face-to-face meetings and through online surveys, our mailing list of 24 transgender community groups with various sizes of membership ranging from 20 to over 150 transgender members living in Scotland and our mailing list of over 250 transgender individuals living across Scotland. The majority of our consultations collected qualitative information rather than quantitative data. Where we have quoted percentages in this response, these are from the detailed survey of LGBT people's views on civil partnership and marriage we conducted in partnership with the Equality Network LGBT Policy project in late 2009 / early 2010. 427 LGBT people responded, making this by far the largest detailed survey on these issues conducted in Scotland. 58 of the respondents (14%) stated they were transgender.

In that survey, 90% of the transgender respondents said that marriage should be available to all couples (same-legal-sex and mixed-legal-sex). Only 2% of the transgender respondents said that the current segregated system (that is, marriage for mixed-legal-sex couples and civil partnership

for same-legal-sex couples) would be fine if a civil partnership could be registered in a ceremony done by a religious or humanist leader. Allowing civil partnerships to be registered in religious ceremonies would clearly not in itself deliver equality for transgender people. Simply adding a religious element to a civil partnership ceremony would not improve the current requirement within the Gender Recognition Act 2004 to divorce or dissolve an existing marriage or civil partnership in order to receive legal gender recognition. Likewise, simply adding a religious element to a civil partnership ceremony would not resolve the intense difficulties and violation of privacy faced by transgender people in accessing any legal recognition of their relationship while they have a legal-sex status which does not match the gender identity by which they live, especially non-binary people and intersex people. (Our Response to Question 20 explores these issues further.)

In support of the Scottish Government's consultation on these issues, the Scottish Transgender Alliance consulted transgender people face-to-face at one of its regular Forum meetings in Dundee on 21 October 2011 and also via the Equality Network's five consultation meetings during November 2011, in Dumfries, Dundee, Edinburgh, Glasgow and Inverness. All of the transgender participants at those meetings strongly agreed that the introduction of religious civil partnership ceremonies is not an appropriate alternative option to the introduction of same-legal-sex marriage.

The Scottish Transgender Alliance believes that same-legal-sex marriage should be introduced to make marriage available to all couples in a gender-neutral and sex-neutral manner and that civil partnership should be retained and also opened up to all couples in a gender-neutral and sex-neutral manner. If that happens, we consider that legally effective religious and humanist civil partnership ceremonies should be available from those organisations and their celebrants who are willing to conduct them.

Our reasons are:

1. There may be a minority of couples who would wish to register their partnership in a religious ceremony, but who would prefer their partnership registered as a civil partnership rather than a marriage. For example one of them may have been married before and may consider that to be a commitment that endures for their lifetime. Or the couple may hold a religious view that marriage is for mixed-legal-sex couples only.
2. There may be some religious organisations which would be prepared to conduct religious civil partnership ceremonies but not willing to conduct marriages, for example because their doctrine specifies that marriage is for mixed-legal-sex couples only.

Question 2 (Paragraphs 2.14 to 2.19)

Do you think that the proposals in England and Wales on registration of civil partnerships in religious premises would be appropriate for Scotland?

Yes
No
Don't know

If you have answered no, please explain what elements of the proposals in England and Wales you consider inappropriate for Scotland.

The UK Government's stated policy aim for the recent new arrangements for civil partnership registration in England and Wales is "to enable secular civil partnership registrations to be conducted on religious premises that have been approved for the purpose" ['Civil partnership in religious premises consultation response', UK Government Equalities Office, Nov 2011]. It is our view that this is illogical and that it cannot be a fully secular ceremony if it is taking place on religious premises. Registrars in Scotland do not conduct ceremonies on religious premises, and in our view that should not change.

We believe that same-sex couples who would wish for a religious civil partnership ceremony would want a single integrated ceremony conducted by the religious celebrant, not a dual ceremony with a religious part and a secular part, potentially conducted by two different people, albeit on the same religious premises, as is required under the new England and Wales legislation.

The appropriate solution for the provision of religious civil partnership ceremonies in Scotland would therefore be to approve the religious celebrant to "solemnise" the civil partnership, sign the civil partnership schedule and return it to the registrar – arrangements similar to those for religious marriage registration.

Question 3 (Paragraphs 2.20 to 2.24)

Do you agree with allowing religious celebrants to register civil partnerships in religious premises?

Yes
No
Don't know

Please give reasons for your answer

For the reasons stated above, we believe that this is the appropriate approach in Scotland to allowing religious civil partnership ceremonies. The legal arrangements for this should parallel the arrangements for religious marriage solemnisation.

Question 4 (Paragraphs 2.20 to 2.24)

Do you agree with allowing religious celebrants to register civil partnerships in other places agreed between the celebrant and the couple?

Yes
No
Don't know

Please give reasons for your answer

In order to maximise choice and to simplify matters by keeping the arrangements for religious civil partnership ceremonies in line with those for religious marriages, religious celebrants should have the same freedom to choose the place of registration, in agreement with the couple, as they currently have to choose the place of religious marriage solemnisation.

Question 5 (Paragraph 2.25)

Do you agree that religious bodies should not be required to register civil partnerships?

Yes
No
Don't know

Please give reasons for your answer

Comments

We have not consulted with transgender people on the specific issue of whether religious bodies should be required to register civil partnerships. The results of our consultation on whether religious bodies should be required to solemnise same-legal-sex marriages are described at question 14 below.

The Scottish Transgender Alliance believes that each religious body should be free to decide for itself whether or not to conduct religious civil partnership ceremonies.

We regret that some religious bodies will decide not to allow their celebrants to conduct either same-legal-sex marriages or religious civil partnerships, but that is a decision for them.

We think that it is possible that some religious bodies may be willing to

conduct same-legal-sex marriages, but may not wish to conduct religious civil partnerships, and that some may be willing to conduct religious civil partnerships, but not same-legal-sex marriages.

Question 6 (Paragraphs 2.26 and 2.27)

Do you consider that religious celebrants should not be allowed to register civil partnerships if their religious body has decided against registering civil partnerships?

Yes
No
Don't know

Please give reasons for your answer

Comments

We recognise that some religious bodies have expressed concerns about potential external or internal pressure to conduct same-legal-sex ceremonies. For similar reasons to those set out in our answer to question 14 below, we believe that concerns about legal action forcing religious bodies or celebrants to conduct same-legal-sex ceremonies are misplaced. However we recognise that differences of opinion on civil partnership amongst members of religious bodies may result in stresses within those bodies. Religious bodies may therefore prefer that the law puts in place a mechanism that ensures that individual celebrants may not register civil partnerships without their religious body's approval.

In doing so, the law would in effect put in place a "double lock", whereby both the religious body, and the individual celebrant, must say yes, before the celebrant can be approved by the General Register Office for Scotland to conduct civil partnership ceremonies. This would help reinforce the certainty that no religious body or celebrant will be required to conduct civil partnership ceremonies unless they agree to.

Question 7 (Paragraphs 2.28 to 2.30)

Do you agree that individual religious celebrants should not be required to register civil partnerships?

Yes
No
Don't know

Please give reasons for your answer

Comments

Our view is that it is unlikely that any religious body would wish to require a celebrant to conduct civil partnerships against the celebrant's will. However, we would be content for the legislation to make provision requiring the individual celebrant's agreement, before the celebrant is approved to conduct civil partnerships – this would implement the double lock referred to in our comments on question 6.

Question 8 (Paragraphs 2.31 to 2.35)

Which of the options do you favour to ensure that religious bodies and celebrants do not have to register civil partnerships against their will?

Do you favour:

- Option 1
Option 2
Neither

If you have another option, please describe it.

Comments

Our view is that option 1 would in principle be more in line with the spirit of equality. It would mean that, in the specific law on approving celebrants, no distinction would be made between marriage and civil partnership. However, it is quite clear that in practice a significant number of religious marriage celebrants, including for example all Catholic priests, will not be carrying out civil partnership ceremonies. In such circumstances, it does not seem unreasonable to operate a system of separate approvals for celebrants to solemnise mixed-legal-sex marriages and to conduct civil partnership ceremonies.

Option 1 leaves the implementation of the rule discussed in question 6 above (preventing individual celebrants from acting contrary to the decision of their religious body) entirely to the internal discipline of religious bodies. We appreciate that some religious bodies may prefer the law to include procedures which reinforce the certainty that the religious body will not be required to conduct civil partnerships and will be able to prevent its celebrants from doing so. Option 2 would do that, and we would be content with that option.

See our answer to question 14 below for our views on the importance of the Equality Act 2010 and the European Convention on Human Rights in

ensuring that religious bodies and celebrants cannot be challenged under equality law for refusing to register civil partnerships.

Question 9 (Paragraphs 2.36 to 2.40)

Religious bodies may not wish their premises to be used to register civil partnerships. Do you agree that no legislative provision is required to ensure religious premises cannot be used against the wishes of the relevant religious body?

Yes
No
Don't know

Please give reasons for your answer

Comments

We feel that it may be difficult to legislate for every case, when there may be many different models for sharing of premises between religious groups, and with non-religious groups. We note that where a religious body uses, for example, a village hall for worship, and that hall is otherwise used mostly for non-religious purposes, the hall can already lawfully be used for civil partnership ceremonies conducted by the district registrar.

We therefore do not think that wholly new issues arise about the sharing of premises, if religious civil partnership ceremonies are allowed. We would expect the bodies that share premises, including the owner of the premises, to reach agreement about the appropriate use of the premises for either non-religious or religious civil partnership ceremonies.

Same sex marriage

Question 10 (Paragraphs 3.11 and 3.12)

Do you agree that the law in Scotland should be changed to allow same sex marriage?

Yes
No
Don't know

Please give reasons for your answer

Comments

The Scottish Transgender Alliance is strongly of the opinion that the law should allow same-legal-sex marriages, and, more generally, that marriage should be sex/gender-neutral and available to couples regardless of their legal and physical sexes, perceived and performed genders, self-defined gender identities and stages of any gender reassignment processes.

In the 2009/10 survey of 58 transgender people, 90% said that this change is needed. 55% said that implementing this change is a high priority, and a further 33% said that it is a priority. From more informal qualitative consultation, we believe that, if anything, those figures underestimate the proportion of transgender people who consider that this change is required.

In our survey and our consultation events we asked people why marriage should be opened up to same-legal-sex couples. Transgender people gave a range of reasons in support of sex/gender-neutral marriage, with the following main themes:

Segregation is not equality

Even though the legal rights and responsibilities of civil partnership and marriage are almost identical, the two are not perceived as of equal status and value. Civil partnership is seen as a legal contract, while marriage is seen as the gold standard for celebrating the joy of love and commitment. Marriage is universally understood for its symbolism and its personal, community, and in some cases, religious significance. No one proposes to their partner by asking "Will you civil partner me?" – civil partnership just does not have the same meaning.

Civil partnership was invented specifically to deny same-legal-sex couples access to marriage, and is seen by many same-legal-sex couples as a second-class status.

Put simply, equality means making the same choices available to all. If

mixed-race couples were denied the opportunity to marry, and instead offered civil partnership with the same legal effects, that would readily be seen as unacceptable racist discrimination. The ban on same-legal-sex couples marrying is equally unacceptable.

In 2008, the Connecticut Supreme Court considered whether that state's introduction of civil unions (a civil partnership type status for same-legal-sex couples with identical state-level legal effects to marriage) was consistent with the state constitutional equality guarantee. The Court concluded, "in the light of the history of pernicious discrimination faced by gay men and lesbians, and because the institution of marriage carries with it a status and significance that the newly created classification of civil unions does not embody, the segregation of heterosexual and homosexual couples into separate institutions constitutes a cognizable harm." The Court ordered that marriage itself be opened up to same-legal-sex couples.

The unfair and arbitrary nature of the current law is particularly striking when considering the situation of transgender people. For example, transsexual woman may have been living for many years simply as a woman without anyone other than her partner knowing of her previous gender reassignment from male to female. If the transsexual woman has received a full gender recognition certificate she will be legally regarded as female but if she has not been able to get a full gender recognition certificate, perhaps because the doctor who assessed her for gender reassignment surgery is no longer alive, then she will still be legally regarded as male. She might enter into a relationship with a lesbian woman or she might enter into a relationship with a heterosexual man. If she has not been able to get a full gender recognition certificate then the law will absurdly direct her to marry as the "husband" of a lesbian female partner or direct her to civil partner her heterosexual boyfriend as though they are a same-sex couple. and the couple will be regarded in law as a mixed-legal-sex couple despite living in society as a gay couple. Such a situation is such a violation of identity and privacy that many such couples would feel completely unable to seek formal recognition of their relationship.

Reducing discrimination and its effects

Although the legal effects of marriage and civil partnership are almost identical, in the Equality Network's 2009/10 survey, of 103 LGBT people in civil partnerships, 58% said they had not been given the same rights and respect that a married couple would get. That rose to 64% for women civil partners. Examples included people being referred to as "not really married"; banks not understanding why civil partners wanted a joint account; employers refusing to change Miss to Mrs on documentation; hospitals refusing to recognise the civil partner as next of kin; forms not including civil partnership status options alongside marital status.

These kinds of discrimination and less favourable treatment are in part due

to an ignorance of what civil partnership is, and are in part due to prejudice for which the separate status of civil partnership provides an excuse.

The introduction of same-legal-sex marriage would not eliminate this discrimination against same-legal-sex married couples, but it would remove the problem of ignorance, and remove one of the excuses for prejudice.

Furthermore, the segregated status of civil partnership, including the separate terminology, in itself defines same-legal-sex couples as “other”, and thereby promotes stigmatisation, prejudice and discrimination such as homophobia, biphobia and transphobia in forms including bullying and hate crime. The introduction of same-legal-sex marriage would help reduce these forms of prejudice against LGBT people because it would eliminate the official “otherness” status of LGBT people. It would also help to reduce prejudice and discrimination more widely, because it would be a clear public demonstration of Scotland’s refusal to accept discrimination, and Scotland’s embrace of diversity, equality and freedom.

Discrimination in the law

Although the domestic legal effects of civil partnership and marriage are almost identical, there is a significant difference in terms of international recognition. A Scottish same-legal-sex marriage would be recognised in any other country which allowed same-legal-sex marriage, because of the well established international law framework for recognising marriage. That is not the case for international recognition of civil partnership, which is more confused and irregular.

A specific form of legal discrimination caused by the ban on same-legal-sex marriage is discrimination against married transsexual people in the provision of legal gender recognition. This is dealt with in our answer to question 20 below.

Freedom of religion and belief

Same-legal-sex couples cannot have their legal relationship solemnised by a humanist or religious celebrant. Celebrants of the Humanist Society of Scotland solemnise marriages (under the religious marriage law) and very much want to be able to solemnise same-legal-sex marriage.

The Unitarians, Quakers, Metropolitan Community Church, Liberal Jewish community and Pagan Federation of Scotland also solemnise marriages and want to solemnise same-legal-sex marriages.

Freedom of religion and belief means respecting the right of those bodies that wish to solemnise same-legal-sex marriages, and the right of those couples who wish a religious same-legal-sex marriage to be solemnised by those bodies. It also means respecting the right of religious bodies that

disagree with same-legal-sex marriage to decline to conduct them.

Neither set of religious bodies (those that agree, and those that disagree with same-legal-sex marriage) has the right to impose their views about this issue on the other set. Marriage is not owned by any religious body (and in fact predates any current religious faith), and no religious body should have a veto over the arrangements for marriage.

Wider effects of sex/gender-neutral marriage

The introduction of sex/gender-neutral marriage will have no effect on the existing or future marriage of any mixed-legal-sex couple. Rather it could be argued that introducing same-legal-sex marriage to make marriage in Scotland sex/gender-neutral would strengthen the institution of marriage, by enriching it, and demonstrating that it is a modern, relevant and equitable institution, desired and valued across Scotland's diverse population.

The introduction of sex/gender-neutral marriage will be in line with Scotland's ideals of equality, diversity, tolerance, respect, freedom, dignity and fairness. By publicly embodying those values, the introduction of sex/gender-neutral marriage will also further strengthen those values in Scottish society.

The legal definition and effects of marriage have changed enormously over the past couple of hundred years, up to and including the major changes to divorce law in the Family Law (Scotland) Act 2006. The introduction of same-legal-sex marriage, in contrast, will not change at all the law applying to mixed-sex marriages, and is therefore creating sex/gender-neutral marriage is a minor alteration compared to what has gone before.

Public opinion

The 2010 Scottish Social Attitudes Survey asked "Do you agree or disagree that gay and lesbian couples should be allowed to marry?" 61% agreed, while only 19% disagreed. Survey respondents were asked their religious denomination, so the results may be analysed by religious denomination. 54% of Catholics agreed with same-sex marriage, with 21% disagreeing; 50% of Presbyterians agreed, with 25% disagreeing. Amongst those of no religion, 72% agreed with same-sex marriage and 12% disagreed.

Support for same-sex marriage is particularly strong amongst younger people, with 77% of under 25s in support as long ago as 2006 (24% more than the population as a whole). The introduction of sex/gender-neutral marriage has particular resonance for young people, who see it as being about Scotland looking forward as a modern 21st century country.

Not surprisingly, given public opinion, there is wide support across political parties for introducing same-legal-sex marriage to make marriage sex/gender-neutral. The Scottish Liberal Democrats and Scottish Green Party included a pledge to introduce same-legal-sex marriage, mixed-legal-sex civil partnership and remove the Gender Recognition Act 2004 requirement to end any existing marriage or civil partnership in their 2011 Holyrood manifestos. The SNP and Labour Party included a pledge to consult on the issue.

Question 11 (Paragraph 3.13)

Do you agree that religious bodies and celebrants should not be required to solemnise same sex marriage?

Yes
No
Don't know

Please give reasons for your answer

The Scottish Transgender Alliance has always believed, and continues to believe, that each religious body should be free to decide for itself whether or not to conduct same-legal-sex marriages.

We regret that some religious bodies will decide not to conduct same-legal-sex marriages, but that is a decision for them. It would be wrong, as well as futile, for the law to seek to impose this on any religious body.

We welcome that a number of religious bodies, with celebrants approved to solemnise marriages, have already made clear that they wish to conduct same-legal-sex marriages, including the Unitarians, the Metropolitan Community Church, the Quakers, the Liberal Jewish community, and the Pagan Federation of Scotland.

We note that within the Church of Scotland there are internal and developing processes of discussion and eventual decision around issues relating to same-legal-sex couples, with a Theological Commission due to report in 2013. The 2010 Social Attitudes Survey found that 50% of Presbyterians agreed with same-legal-sex marriage, with 25% disagreeing. There is also discussion within the Scottish Episcopal Church. The law on same-legal-sex marriage therefore needs to be flexible enough that religious bodies can “opt in”, if and when they decide to do so at a later date.

See also our answer to question 14 below.

Question 12 (Paragraphs 3.14 to 3.18)

Do you agree with the introduction of same-sex **civil** marriage only?

Yes

No

Don't know

Please give reasons for your answer

We note that just over half of marriages conducted in Scotland are civil. The remainder are religious (42%) or humanist (7%). The 2009/10 survey of 58 transgender people asked, if marriage and civil partnership were both available for same-legal-sex couples, whether survey respondents would consider a civil partnership, a civil marriage, a humanist marriage or a religious marriage ceremony, in the future. 26% of transgender respondents said that they would consider a religious marriage. The percentage of transgender respondents who said that they would consider a humanist marriage was 22%. There is clearly therefore a significant demand amongst transgender people for same-legal-sex religious or humanist marriage.

As noted in our answer to question 11, there are a number of religious bodies with celebrants approved to solemnise marriages, who already wish to solemnise same-legal-sex marriages.

The introduction of civil only same-legal-sex marriage would deny those bodies the freedom to choose to conduct same-legal-sex marriages, and would deny the very significant proportion of transgender people who would want a religious marriage that opportunity.

Furthermore, introducing civil only same-sex marriage would deny the Humanist Society of Scotland (HSS) the freedom to carry out same-sex marriages, because it does so under the religious marriage provisions of the Marriage (Scotland) Act 1977. The HSS strongly wish to solemnise same-sex marriages, and a very significant proportion of LGBT people (22% in our survey) say they would like the opportunity for a humanist same-sex marriage ceremony.

We believe that if same-legal-sex marriage is introduced, the principle of religious freedom requires that those religious (and humanist) bodies that wish to solemnise same-legal-sex marriages should be able to do so, while those that do not should be free not to. Neither set of religious bodies should impose its views on the other set.

Changing the law to introduce civil only same-legal-sex marriage would not introduce true equality of treatment under the law for transgender people. It would therefore tend to undermine some the wider benefits of equality referred to in our answer to question 10 above. The campaign for equality would need to continue until the freedom to solemnise same-legal-sex marriages, for those religious and humanist bodies that wish to do so, was

established.

Question 13 (Paragraph 3.19)

Do you agree with the introduction of same-sex marriage, **both** religious and civil?

Yes
No
Don't know

Please give reasons for your answer

This is the option that delivers equality under the law for same-legal-sex couples, as well as freedom of religious expression, so long as the legal provisions ensure that no religious body shall be required to solemnise same-legal-sex marriages.

We welcome that a number of religious bodies with celebrants approved to solemnise marriages, have already made clear that they wish to conduct same-legal-sex marriages, including the Unitarians, the Metropolitan Community Church, the Quakers, the Liberal Jewish community, and the Pagan Federation of Scotland.

The Humanist Society of Scotland (HSS) conducts marriages under the legal provisions for religious marriage. The HSS conducts 7% of all marriages – more than any religious body except the Church of Scotland. The HSS strongly supports same-legal-sex marriage and wishes to be able to solemnise same-legal-sex marriages.

Question 14 (Paragraphs 3.23 and 3.24)

Do you agree that religious bodies should not be required to solemnise same sex marriage?

Yes
No
Don't know

Please give reasons for your answer

Comments

The view of most of the 150 LGBT participants in the Equality Network's five consultation meetings around the country in November 2011 was that religious bodies should not be required to solemnise same-sex marriages.

Views expressed included that “faiths have their key tenets; we shouldn’t change them even if we don’t like them” and “I wouldn’t want them to conduct my marriage if they didn’t want to”.

Nevertheless, it was noted by participants that those religious bodies which refuse to conduct same-sex marriages are adopting a position of deliberate discrimination against LGBT people, and participants viewed this as a matter for disappointment and concern. It was noted that religious bodies would not (and could not lawfully) discriminate in this way on grounds of race. However, religious bodies can lawfully discriminate in this way on grounds of sexual orientation (see below).

The Scottish Transgender Alliance has always believed, and continues to believe, that each religious body should be free to decide for itself whether or not to solemnise same-legal-sex marriages. We regret that some religious bodies will decide not to do so, but that is a decision for them. It would be wrong, as well as futile, for the law to seek to impose this on any religious body.

As noted in our answer to question 13, we welcome that a number of religious bodies which have celebrants approved to solemnise marriages have already made clear that they wish to conduct same-legal-sex marriages.

We note that, amongst the larger churches, within the Church of Scotland and the Scottish Episcopal Church there are internal and developing processes of discussion and eventual decision around issues relating to same-sex couples. The law on same-sex marriage therefore needs to be flexible enough that religious bodies can “opt in” if and when they decide to do so.

We note the concerns that have been raised by some religious bodies that equality (anti-discrimination) law might be invoked to require them to solemnise same-sex marriages. We strongly believe that these concerns are misplaced. Paragraph 2 of schedule 23 to the Equality Act 2010 provides that religious bodies may lawfully restrict participation in their activities (which includes their provision of marriage), on grounds of sexual orientation. Such a restriction is allowed if it is necessary to comply with the religious body’s doctrine, or to avoid conflict with strongly held religious convictions of a significant number of the religion’s followers. Paragraphs 2(4) and (5) apply the same rule to religious celebrants and others acting on behalf of the religious body. It is therefore clear that religious bodies and their celebrants cannot be successfully challenged under the Equality Act, for refusing to solemnise same-legal-sex marriages.

We also believe that the guarantee of freedom to manifest one’s religion or belief in worship, teaching, practice and observance, in article 9 of the

European Convention on Human Rights, underpins the right of religious bodies to refuse to conduct same-legal-sex marriages. We note that in ten years of same-legal-sex marriage in other European countries, there has never been any requirement on any religious body which disagrees with same-legal-sex marriages to solemnise them.

In summary, the right of religious bodies to refuse to solemnise same-legal-sex marriages is guaranteed by the promises of the Scottish and UK Governments and the commitments of the members of the corresponding Parliaments, by UK equality law, and by international human rights law.

Paragraph 25 of schedule 3 to the Equality Act 2010 contains provisions that any religious celebrant may refuse to marry a person who the celebrant reasonably believes has obtained gender recognition (that is, who is transsexual and has changed legal gender), without contravening the law against gender reassignment discrimination. Although for the reasons set out in the preceding paragraphs it is not needed, we would be content for the Scottish Government to ask the UK Government to insert a similar provision into the Equality Act, which would state for the avoidance of doubt that no religious body or celebrant would breach the law against sexual orientation discrimination, for refusing to marry a couple because they are of the same-legal-sex. However, it is important that such an amendment to the Act be made in a timely manner, so that the introduction of same-legal-sex marriage in Scotland is not delayed. The amendment might be made by the UK Government by statutory instrument, under the power in section 104 of the Scotland Act 1998.

Question 15 (Paragraphs 3.25 and 3.26)

Do you consider that religious celebrants should not be allowed to solemnise same sex marriages if their religious body has decided against solemnising same sex marriage?

Yes
No
Don't know

Please give reasons for your answer

We recognise that some religious bodies have expressed concerns about potential external or internal pressure to solemnise same-legal-sex marriages. For the reasons set out in our comments on question 14, we believe that concerns about legal action forcing religious bodies or celebrants to solemnise same-legal-sex marriages are misplaced. However we recognise that differences of opinion on same-legal-sex marriage amongst members of religious bodies may result in stresses within those bodies. Religious bodies may therefore prefer that the law puts in place a

mechanism that ensures that individual celebrants may not solemnise same-legal-sex marriages without their religious body's approval.

In doing so, the law would in effect put in place a "double lock", whereby both the religious body, and the individual celebrant, must say yes, before the celebrant can be approved by the General Register Office for Scotland to solemnise same-legal-sex marriages. This would help reinforce the certainty that no religious body or celebrant will be required to solemnise same-legal-sex marriage unless they agree to.

Question 16 (Paragraphs 3.27 and 3.28)

Do you agree that individual religious celebrants should not be required to solemnise same sex marriage?

Yes
No
Don't know

Please give reasons for your answer

The Scottish Transgender Alliance's view is that it is unlikely that any religious body would wish to require a celebrant to conduct same-legal-sex marriages against the celebrant's will. We would be content for the legislation to make provision requiring the individual celebrant's agreement, before the celebrant is approved to solemnise same-sex marriages – this would implement the double lock referred to in our comments on question 15.

Question 17 (Paragraphs 3.29 to 3.33)

Which of the options do you favour to ensure that religious bodies and celebrants do not have to solemnise same sex marriage against their will?

Do you favour:
Option 1
Option 2
Neither
Don't know

Please give reasons for your answer and if you have another option, please describe it.

Comments

Our view is that option 1 would in principle be more in line with the spirit of equality. It would mean that, in the specific law on approving celebrants, no distinction would be made between mixed-legal-sex and same-legal-sex marriage. However, it is quite clear that in practice a significant number of religious marriage celebrants, including for example all Catholic priests, will not be solemnising same-legal-sex marriages or treating marriage as sex/gender-neutral. In such circumstances, it does not seem unreasonable to operate a system of separate approvals for celebrants to solemnise mixed-legal-sex and same-legal-sex (and sex/gender-neutral) marriages.

Option 1 leaves the implementation of the rule discussed in question 15 above (preventing individual celebrants from acting contrary to the decision of their religious body) entirely to the internal discipline of religious bodies. We appreciate that some religious bodies may prefer the law to include procedures which reinforce the certainty that the religious body will not be required to solemnise same-legal-sex marriages or sex/gender-neutral marriages and will be able to prevent its celebrants from doing so. Option 2 would do that, and we would be content with that option.

See our answer to question 14 above for our views on the importance of the Equality Act 2010 and the European Convention on Human Rights in ensuring that religious bodies and celebrants cannot be challenged under equality law for refusing to solemnise same-legal-sex marriages and sex/gender-neutral marriages.

Question 18 (Paragraphs 3.34 to 3.39)

Religious bodies may not wish their premises to be used to solemnise same sex marriage. Do you agree that no legislative provision is required to ensure religious premises cannot be used against the wishes of the relevant religious body?

Yes
No
Don't know

Please give reasons for your answer

We feel that it may be difficult to legislate for every case, when there may be many different models for sharing of premises between different religious groups and with non-religious groups. We note that where a religious body uses, for example, a village hall for worship, and that hall is otherwise used mostly for non-religious purposes, the hall can already lawfully be used for civil partnership ceremonies conducted by the district registrar.

We therefore do not think that wholly new issues arise about the sharing of premises, if religious same-sex marriages are allowed. We would expect the bodies that share premises, including the owner of the premises, to reach agreement about the appropriate use of the premises for either civil or religious marriage ceremonies.

Question 19 (Paragraph 3.41)

If Scotland should introduce same-sex marriage, do you consider that civil partnerships should remain available?

Yes
No
Don't know

Please give reasons for your answer

In our 2009/10 survey, 90% of the 58 transgender respondents thought that marriage should be opened up to same-legal-sex couples. That 90% was divided into 26% who felt that, if that happened, civil partnership would no longer be needed, and 64% who believed that civil partnership should be retained, and opened up to mixed-legal-sex couples.

Compared to non-transgender LGB respondents surveyed by the Equality Network, transgender respondents were more likely to believe that both civil partnerships and marriage should be open to all, rather than believing that civil partnerships would no longer be needed if marriage were open to all.

This is not surprising, because making both civil partnership and marriage open to all in a sex/gender-neutral manner is the option which would most easily enable the removal of the requirement to divorce or dissolve an existing marriage or civil partnership in order to obtain a gender recognition certificate (GRC). In addition, the distress caused to many couples by the current requirements for receiving gender recognition have led many transgender people to feel particularly strongly about the importance of people being able to select the terminology of marriage or civil partnership which they view as most reflective of their relationship, rather than having terms imposed upon them by others. Transgender people can face intense emotional distress and practical difficulties through being forced to change their relationship status to get gender recognition. It is vital to ensure that similar difficulties are not be created in the future for any same-legal-sex couples currently in a civil partnership, who might not wish to change to marriage upon one partner getting gender recognition.

We also asked the 58 transgender survey respondents, if marriage and civil partnership were both available, whether they might in future consider a civil

partnership, a civil marriage, a religious marriage or a humanist marriage. 31% of the transgender respondents said they would consider a civil partnership, while 33% who would consider a civil marriage, 26% a religious marriage, and 22% a humanist marriage (some respondents chose more than one option). It is clear that there would be a significant minority demand from transgender couples for civil partnership, even if sex/gender-neutral marriage was available, and even though the legal effects of the two are almost identical. This is because marriage and civil partnership are symbolically, socially and personally different. Some transgender people have advised us that they would prefer civil partnership to marriage because, to some, marriage is perceived as too associated with religion, or as sexist or over-traditional.

The conclusion that there will be continuing demand for civil partnership is reinforced by experience from the Netherlands, where both same-legal-sex marriage and registered partnership have been available since 2001. Registered partnership is, like civil partnership in the UK, almost identical in legal effects to marriage. Approximately one in four same-sex couples who register their relationship in the Netherlands choose registered partnership – the other three quarters choose marriage.

Because of this demand, and because we believe in maximising choice, we believe that civil partnership should be retained after the introduction of same-sex marriage. Further advantages of retaining civil partnership are that the status of existing civil partnerships would be unchanged, and the recognition of overseas civil partnerships would continue. We are particularly concerned about the position of couples who have obtained a civil partnership (registered partnership, PACS, civil union, etc) in another country and are now living in Scotland. At the moment they are recognised as civil partners, with all the consequent rights and responsibilities. If civil partnership were abolished, they would lose those rights and responsibilities overnight.

Mixed-legal-sex civil partnership

64% of the 58 transgender survey respondents, and all the 150 LGBT participants in the Equality Network's five consultation meetings around the country in November 2011, agreed that if civil partnership is retained, it should be opened up to mixed-legal-sex couples. This is also the view of the Scottish Transgender Alliance, for the following reasons:

1. The principle of equality requires that the same choices be available to mixed-legal-sex and same-legal-sex couples, and more generally to couples regardless of their genders. The current restriction of civil partnership to same-legal-sex couples only, discriminates against mixed-legal-sex couples, especially for those non-binary people and intersex people for whom legal sex, physical sex and gender identity

do not fully align.

2. There is a demand for mixed-sex civil partnership. In the Netherlands, where mixed-legal-sex marriage and mixed-legal-sex registered partnership are both available, with almost identical legal effects, approximately 10% of mixed-legal-sex couples who register their relationship choose registered partnership; the other 90% choose marriage.
3. Civil partnership could be a popular alternative to cohabitation for mixed-legal-sex couples who do not want to marry. Civil partnership would put their relationship on a much clearer and broader legal basis than cohabitation does.
4. The extension of civil partnership to cover mixed-legal-sex couples would allow the recognition in Scotland of the status of mixed-legal-sex couples who have registered a civil partnership (registered partnership, civil union, PACS, etc) in those countries providing such a thing to mixed-legal-sex couples, including New Zealand, France, the Netherlands, etc. At the moment, the partnership of such couples is not recognised at all by Scots law, giving them no legal protection while living here. This is inequitable, because same-legal-sex couples who have registered the same overseas partnership in the same country are recognised in Scotland as being civil partners, and have consequent rights and responsibilities under Scots law.

Question 20 (Paragraph 4.19)

Do you have any other comments?

Yes
No

We are particularly interested in your views on:

- potential implications of the proposals for transgender people (paragraph 3.42)
- possible transitional arrangements (paragraphs 3.43 and 3.44);
- recognition of Scottish same sex marriages elsewhere (paragraphs 3.45 to 3.49);
- any comments on forced marriage (paragraphs 3.51 and 3.52)
- any comments on sham marriage (paragraph 3.53)
- potential financial implications (paragraphs 4.01 to 4.08);
- potential equality implications (paragraphs 4.09 to 4.14).

Transgender people

To inform this consultation response the Scottish Transgender Alliance (STA) has consulted, both during face-to-face meetings and through online

surveys, our mailing list of 24 transgender community groups with various sizes of membership ranging from 20 to over 150 transgender members living in Scotland and our mailing list of over 250 transgender individuals living across Scotland.

The Scottish Transgender Alliance recognises and strives to include the fullest diversity of identities and experiences within its equality and human rights work, including transsexual women, transsexual men, intersex people, cross-dressing/transvestite people, and other nonbinary people (who do not have binary (male or female) gender identities and instead self-identify with various terms such as androgyne, polygender, genderqueer or nongendered). The quotes contained within this response were all received by the Scottish Transgender Alliance from people with these various identities who are currently discriminated against by the segregation of the marriage and civil partnership systems. The quotes have had to be made anonymous by the STA in order to protect the individuals concerned from transphobic press intrusion in their private lives.

The Scottish Transgender Alliance strongly welcomes the proposal in paragraph 3.42 that implementation of same-sex marriage would enable the removal of the requirement in the Gender Recognition Act 2004 to end any existing marriage in order to receive legal gender recognition following gender reassignment. However, it is vital to recognise that for equality it is necessary to remove from the Gender Recognition Act 2004 **both** the requirement to end any existing **marriage** and also the requirement to end any existing **civil partnership**. To remove the divorce/dissolution requirement for only marriage and not also for civil partnership, would be a form of sexual orientation discrimination.

It is the strong view of the Scottish Transgender Alliance that to end the direct and indirect family law discrimination against transgender people, their partners/spouses and children, it is necessary to implement all of the following:

1. open up marriage to same-legal-sex couples and amend any sex/gender references in marriage legislation to make marriage sex/gender-neutral;
2. open up civil partnership to mixed-legal-sex couples;
3. remove both the requirement to end an existing marriage and the requirement to end an existing civil partnership from the Gender Recognition Act 2004.

Transsexual people

"I was married in Church; though not a believer myself, my wife was and is... I am hugely upset that in order to achieve a full GRC we must end our marriage... This requirement is unfair, ungodly and flies in the face of natural justice. The argument that marriage is only a matter for churchmen, etc is spurious in the extreme. Marriage is the province also of the state, and the

state has long arbitrated in it's meaning and purpose."

Quote provided by a transsexual person to the STA

"I transitioned nearly 3 years ago and have maintained my relationship with my wife. We have both worked so hard at this and it has been one of the hardest things we have both had to do. There have been times when we have both been in tears and on the verge of walking out. But our love for each other and our commitment to the vows we exchanged has held and now we have reach new levels of growth and understanding of both ourselves, each other and our marriage. And what is our reward for this heartache, commitment and perseverance? To be told that in order to be totally legally recognized in my affirmed gender, we have to dissolve the very marriage we have both fought so hard to keep alive. Just due to some homophobic doctrine that two people of the same sex cannot be married. So far I have rejected this halfway house apartheid arrangement and have not applied for my GRC despite the legal difficulties this has posed and the mental pain it causes me."

Quote provided by a transsexual person to the STA

"We have had to make an unnecessary compromise between remaining married and getting legal recognition of my gender... And it means that we have a series of uncomfortable conversations each year when renewing things like car insurance - as systems don't cope with two women being married and not in a civil partnership. It actually makes me angry - why the idea of two women being married was such a no-no. Yet that is what my wife and I are to all intents and purposes - two women, married because the state cannot grant me the gender of a woman. We have a stable, happy and loving marriage which the state is forcing us to destroy simply so it can decide to register me as the gender I am. How inhumane is that?"

Quote provided by a transsexual person to the STA

"Heterosexual marriage would now have to be ended for GRC... We have children so it would be I suspect costly. As a religious person I do not see why I should end a marriage which is not broken. My vows were taken in my church (though my views on religion do not make me opposed to divorce per se, just not for me while my marriage is still OK). There were people who witnessed our marriage who are no longer alive. The whole thing would be a sham. Fortunately my partner is now prepared to fight those who demand to see a GRC. However, every time it happens it causes stress."

Quote provided by the spouse of a transsexual person to the STA

"When the Gender Recognition Act came into force, I was eligible to be fast tracked for a full gender recognition certificate. I chose not to follow that path and this why: My wife helped me through the worst years of my life as I battled my own confusion and prejudice in the workplace and in the local health system. My wife is the reason I did not commit suicide. I could not, would not say to her "Thank you for your love and support and, oh, by the way, I need a divorce to get my birth certificate changed." She has done

everything right and it is wholly wrong that she should become an innocent victim. This year, we have been married for 36 years."

Quote provided by a transsexual person to the STA

"The impact on the spouse of this requirement for GRC is devastating. Being required to go through a process of legally nullifying an enduring marriage, often as in my case of 30 years duration, when it is that marriage that represents the love the spouse has shown in staying with and supporting the trans partner is for her and our children humiliating and grossly unfair to them. To the point where the trans person (me) is unable to complete the very process we have all been supporting each other through discrimination, through the RLE, through years of therapy, and through all the love our continuing marriage represents."

Quote provided by a transsexual person to the STA

"I don't understand why the state owns my gender - holding it to ransom in an "your ID or your wife" scenario. Gender should be completely irrelevant when entering a marriage - which means that gender recognition should not force its dissolution. The idea that marriages are for producing children is patently false - otherwise we would have fertility tests before a marriage could be contracted. There is no evidence that same-sex couples in civil partnerships are intrinsically less stable than heterosexual ones in marriages. The word "marriage" has no specific meaning - and certainly does not mean "one man, one woman". Who's defining "man" and "woman" anyway - and why does it matter outside the couple themselves?"

Quote provided by a transsexual person to the STA

"Many people who identify as transsexual and still live in loving and stable relationships are put under an unnecessary pressure to achieve a GRC. This both lessens the sanctity of marriage and goes on to lessen peoples standing in terms of their relationship and "official" gender status."

Quote provided by a transsexual person to the STA

"I obtained my GRC a few months ago, after first divorcing. As a result of this my partner immediately lost all (wife's) automatic inheritance rights. This is particularly relevant at the moment, because I have just been diagnosed with a fast acting life-threatening disease. The process of now having to go through a same-sex civil partnership is a very sensitive one because of my ex-wife's religious background. Do the financial and less hassle benefits outweigh underlying beliefs? Difficult! If we had been able to stay married, there would not really have been an issue."

Quote provided by a transsexual person to the STA

"It is a side effect of the current marriage laws and the Gender Recognition Act that I have a birth certificate showing me as male and passport showing me as female. It has an almost daily effect on my life. If, for example, I apply for motorhome insurance for husband and wife, I am told that they cannot have Ms & Mrs C on the policy and that they will have to go by the birth

certificate and put as as Mr & Mrs C. I try to explain to the insurers that the insurance certificate needs to cover me as I am described in my passport, but they will often argue otherwise. This type of response is a constant strain on daily life. What I need and deserve is to be able to apply for my gender recognition certificate and to retain my existing marriage and to honour the vows I made.”

Quote provided by a transsexual person to the STA

“My wife and I were married in Canada, where there is marriage equality. To obtain a GRC, I would have to end my marriage - but obtaining a GRC is (obviously) not grounds for divorce in Canada. Therefore I am between a rock and a hard place.”

Quote provided by a transsexual person to the STA

As the above personal testimony quotes illustrate, the requirement to divorce, or dissolve one’s civil partnership, in order to obtain gender recognition is a truly iniquitous aspect of the current law. It forces a transsexual person and their partner to decide between their marriage, which may have continued for decades, and their right to legal recognition of the transsexual person’s true gender. It is the only case where the law reaches into a happy marriage which the partners want to continue, and forces them to divorce, on pain of having to continue to live with the wrong legal gender and continued additional exposure to transphobic discrimination, ignorance and service provider confusion and privacy violations. While it is possible for the same couple to register a civil partnership after the divorce and gender recognition have been granted, rights may be lost in the conversion of a marriage to a civil partnership (for example pension rights) and the change from marriage to civil partnership is seen as a “downgrade” because of the different public, social and personal status of marriage and civil partnership.

Couples may therefore choose to remain married and forgo gender recognition. However, the consequences of living in one gender while legally being the other gender are severe and harmful, as was recognised by the European Court of Human Rights in the cases of Goodwin and I v. UK, which established the right to gender recognition.

The Scottish Transgender Alliance is in contact with married couples in Scotland who have chosen to remain married rather than obtain the gender recognition for one partner which is their established ECHR right. Of course the introduction of same-sex marriage would enable gender recognition without divorce (because the only objection to granting gender recognition to a married person at present is that it would create a same-legal-sex marriage). That would be of huge value to couples in this situation.

The Scottish Transgender Alliance believes that the necessary amendments to the Gender Recognition Act 2004 are devolved and do not require any change to the procedures of the UK administered Gender Recognition

Panel. The necessary change could be implemented by enabling sheriff courts to convert an interim gender recognition certificate into a full certificate, without requiring an application for (and granting) a divorce, so long as both spouses certify that they agree to this.

There has been at least one dissolution of civil partnership in Scotland on grounds of interim gender recognition (in 2009/10). We do not know whether the couple in that case would have preferred to remain civil partners if they could have obtained gender recognition without dissolution. However, for reasons set out above in our comments on question 19, we believe that civil partnership should be extended to mixed-legal-sex couples, and in our view the requirement to dissolve a civil partnership to obtain gender recognition should also be abolished.

Intersex people

"Saying that marriage is for a man and a woman automatically makes people whose bodies do not fit these descriptions feel excluded. Even intersex people who identify as male or female are reminded once again that they are considered outsiders, that society requires them to squeeze themselves into approved shapes before recognising them as full citizens."

Quote provided by an intersex person to the STA

"I could never marry under rules that demand I identify as a man or a woman. I am intersex and refuse to be shamed into pretending to be something else."

Quote provided by an intersex person to the STA

"I don't understand why gender has to be a part of marriage. Shouldn't it be a loving, committed relationship that counts? Intersex people are shamed throughout life because we have the 'wrong' genitals. Such things should be none of anybody's business."

Quote provided by an intersex person to the STA

"As a person with intersex history who transitioned from male to female as an adult, I live as a female, while my BC is male. I have no intention of filing for a GRC as I do not deny my original sex assignment, rather, I rejected it as an adult. My partner is also female. Because my BC is male, we could get married even though we are women, yet not have a civil partnership as a same-sex couple. What a ridiculous state of affairs. We should be able to get married or have a civil partnership, as we choose, regardless of what our gender was, is or might be. Both marriage and civil partnership should be available to everybody, equally, whether heterosexual, gay, lesbian, transsexual, transgender, intersex, queer, or whatever."

Quote provided by an intersex person to the STA

"My partner and I currently live in a country where a previous federal government amended the Marriage Act to, amongst other things, take away the existing right of intersex people to marry. My partner and I are intersex. Intersex people are some 4% of the human population, in all nations of the world.

Any intersex person who managed to become married, to anyone else, before the Act was changed, lives in fear of the dissolution of their marriage and of their family. Anyone who has managed, against all the odds, to get married since also lives in fear.

My partner and I dearly want to me united in marriage for the rest of our lives, of what little remains of it, and when one of us dies, for the other to inherit at least something from the other, if we do not die at the same time due to the lifelong, brutal persecution for simply being born intersex that we have experienced since birth. The thought of living one minute without the other is, quite frankly, unthinkable.

We don't have very long to live, either of us. My partner is in constant, worsening, ill health. We want our humanity to be recognized, our partnership to be recognized, under the law in the country we want to return to, to Scotland, to live in for what little remains, and to experience just a little of what it is like to be like others, to have the most precious things that others have, the full and legal right to be with each other in the most wonderful, most committed way possible.

This is real. I am not making this up. We are doing what we can to return, to get out of this place, and to have just a little happiness of the kind others so take for granted.

So-called "opposite sex marriage" excludes intersex people. So-called "same sex marriage" excludes intersex people. Give us marriage equality."

Quote provided by an intersex person to the STA

As the above personal testimony quotes illustrate, intersex people can face severe social stigmatisation and violations of their dignity and privacy from birth onwards throughout their lives. Experiences of painful and degrading non-consensual medical interventions throughout infancy and childhood can leave intersex people feeling extremely ashamed and isolated. Finding a partner who loves and cherishes them regardless of their physical intersex situation is of particular importance, yet the sex-based segregation of the marriage and civil partnership systems can leave intersex people excluded from any legal recognition of their relationships.

The Gender Recognition Act 2004 inadvertently created a situation whereby intersex people registered at birth as a gender which they later do not identify as are currently less able to change their birth certificates than transsexual people. This makes it vital to open up both civil partnership and marriage in a sex/gender-neutral manner to all intersex people by ensuring that couple of any physical sex and gender identity combination can freely choose whether they wish to gain legal recognition of their relationship through civil partnership or marriage.

Nonbinary people

A man can marry a woman, but form a civil partnership with a woman. A woman can marry a man, but form a civil partnership with a man. Like many people, I'm neither wholly male nor wholly female; why should I have to label myself as one or the other in order to formalise my relationship with my partner?"

Quote provided by a nonbinary person to the STA

"I don't like lying. Lying to the government, that's dangerous. I don't want them to get the wrong idea. They think I'm female, but they're wrong... If it [is] enshrined in law that marriage is between a man and a woman, I won't be able to marry. There'll be no legal reason I can't - I can't be recognised legally as non-binary. But it feels so wrong to lie, to promise before Gods that I'm someone I'm not. We lie every day, about who we are. Why should we lie on the best day of our lives?"

Quote provided by a nonbinary person to the STA

"I'm heartened to see Scotland considering an adjustment to the strictly heteronormative and legal-gender segregated definition of 'marriage'. As someone legally defined as female but who is both bi and identifies as non-binary, who has a male husband, I chafe at and am hurt by the expectation (not just societally, but legally, on paperwork and documents etc.) that I am intrinsically female and straight and fitting into a specific role with certain markers. I feel that a change to the legal definition of marriage is a good first step towards combating this, in that it wouldn't assume that someone married to a man is inherently A Woman, but I want to emphasise the words first step.

I'm concerned about the focus of making this about 'same-sex marriage', both on the parts of supporters and detractors. What it should be defined as, in my mind, is equity of marriage access regardless of gender identity. I also believe that non-marriage but equally legally valid civil partnerships should be available to everyone of every gender as well.

I'm hopeful that the Government will make the right decision and be forward-looking in this situation, because it isn't just about 'gay marriage'--it's about an adjustment to better reflect the multi-faceted nature of gender and sexual orientation, which is an issue that isn't going away."

Quote provided by a nonbinary person to the STA

"I have a nonbinary gender identity and live as neither female or male, I also have a transsexual medical history. I present androgynously and consider my gender assigned at birth and the current configuration of my body to be deeply private information that is only revealed to partners and medical professionals on a need to know basis.

The law and common practice currently force me to hold a binary 'legal gender' and disclose this in a wide variety of situations. Doing so gives others permission to misgender me, causes me great discomfort and outs

me as transgender in a way that binary trans people are able to avoid due to the protections of the Gender Recognition Act and the Equality Act.

The binary gender pairing categorisation of civil unions into marriage or civil partnership is another area where a nonbinary person must publicly declare their 'legal gender'. Once married or civil partnered, specifying one's 'marital status' on forms and when registering for services such as joint bank accounts is yet another situation where legal gender is exposed by implication. Declaring marriage as a union between two people regardless of their sex or gender would be a small step towards recognising the wider range of genders that exist and granting nonbinary people privacy from revealing deeply personal information."

At present, within the UK, nonbinary people are unable to receive legal gender recognition as neither male nor female. However, other countries such as Australia, Pakistan and India have started to legally recognise that some people live as neither men nor women and therefore there is the potential that in future some people living in Scotland may have 'X - Undefined' rather than 'Male' or 'Female' listed on their birth certificates and passports. Nonbinary people do not want to have to pretend to identify with a binary gender of either male or female in order to access legal recognition of their relationships. If both civil partnership and marriage were opened up in a sex/gender-neutral manner by ensuring that couples can freely choose whether they wish to gain legal recognition of their relationship through civil partnership or marriage regardless of their legal-sex this would enable nonbinary people to access legal recognitions of their relationships without compromising their identity.. It would also prevent future difficulties for registrars as the number of people coming to the UK with their gender listed as 'X – Undefined' on their identity documents gradually increases.

Equality

The Scottish Transgender Alliance strongly endorses the analysis in paragraphs 4.10 to 4.13 of the consultation paper, that the proposals would further equality for LGBT people, and would increase the religious freedom of those religious groups which wish to solemnise same-sex marriages, without reducing the religious freedom of those religious groups which do not.

Final Point

We consider it a crucial principle that the introduction of same-legal-sex marriage is done by extending and updating the existing law of marriage to apply to all married couples in a sex/gender-neutral manner. To introduce separate provisions applying to same-legal-sex marriages, or to disapply existing marriage provisions in the case of same-legal-sex marriage, where this is not strictly required, would be counter to the principle of equality. However well meant, it could lead to unintended inequalities of effect, and is

more likely to lead to errors (such as the error which recently came to light in the legislation for simplified procedure dissolutions of civil partnerships).