

Registration of Civil Partnerships, and same-sex marriage

Consultation response - Patrick Harvie MSP

Introduction

I am grateful for the opportunity to respond to this consultation and congratulate the Scottish Government not only on the decision to publish it, but also on the expression of the initial view in favour of equal marriage.

Public attitudes regarding same-sex relationships have changed dramatically over recent decades, and the notion of a moral distinction between mixed-sex and same-sex relationships seems increasingly antique and eccentric.

Public opinion is not the same as moral argument of course. Happily in this case, as in the case of changing attitudes to sexism, racism and other forms of prejudice, public opinion is steadily aligning with the principles of equality and human rights. This is entirely welcome, but remains a work in progress.

It is notable that in taking each step toward equality lesbian, gay, bisexual and transgender people have faced many of the same opponents. There were those who opposed decriminalisation of male homosexuality, the equal age of consent, anti-discrimination law in respect of the provision of goods and services, equal consideration for adoption, relevant sexual health interventions, hate crime legislation... and of course civil partnership. Now some of these same voices oppose the idea that the state should equalise the law on marriage, despite assurances that religious bodies will remain free to exclude same-sex couples if they feel they must. Naturally I hope that our whole society, regardless of religious belief, will come to recognise the equality of LGBT people. This may take longer for some than for others; as with many areas of equality there may be those who remain committed to prejudiced attitudes. However the state, and Parliament as the secular authority, should not allow those groups to hold the rest of society back. Scotland is - for the most part - ready to welcome LGBT people on equal terms, and the law should allow this.

One of my last tasks as a youth worker supporting LGBT young people was the development of a training exercise for mainstream youth workers, which involved asking participants to place various events along a timeline. In trialling this with LGBT young people, I can remember the looks of puzzlement from a group of 16-20 year olds on being asked if they knew when male homosexuality had been decriminalised. This group of young people was growing up free of the idea that they would ever have been seen as criminal. While it says a lot about the lack of visibility of LGBT history, that moment also represented a kind of hope. One day, not so very long from now, I hope to see a group of young people express the same puzzlement and incomprehension on learning that same-sex couples were ever denied the right to marry.

Question 1 - Do you agree that legislation should be changed so that civil partnerships could be registered through religious ceremonies?

Yes. Unless the state is to withdraw general support for religious celebrants to carry out the registration of partnership generally (and there appears to be no public appetite for that) there is no case for the legislation to be different in respect of marriage and civil partnership. Some religious bodies will no doubt be less supportive of equality than others, however it is inappropriate for the law to permit religious registration for one type of partnership and not for the other.

Question 2 - Do you think that the proposals in England and Wales on registration of civil partnerships in religious premises would be appropriate for Scotland?

Question 3 - Do you agree with allowing religious celebrants to register civil partnerships in religious premises?

Question 4 - Do you agree with allowing religious celebrants to register civil partnerships in other places agreed between the celebrant and the couple?

I am content to support the position outlined in paragraph 2.22.

Question 5 - Do you agree that religious bodies should not be required to register civil partnerships?

Yes. There is also a case for ensuring that the decision to 'opt-out' should be formally registered, so that each religious body is required to be very clear whether or not couples seeking a civil partnership are welcome.

Question 6 - Do you consider that religious celebrants should not be allowed to register civil partnerships if their religious body has decided against registering civil partnerships?

The answer to this question depends on the meaning of "allowed". It would be reasonable for a religious body which is unwilling to carry out the registration of civil partnerships to place its own requirement on its celebrants to comply with that stance. However it would not be reasonable for the law to prohibit individual celebrants from reaching their own view. The enforcement of a religious body's decision not to carry out civil partnerships is an internal matter, and is not the role of the state.

Question 7 - Do you agree that individual religious celebrants should not be required to register civil partnerships?

Individual celebrants currently have the discretion to refuse to carry out a marriage. The degree of discretion in respect of civil partnerships should be the same.

Question 8 - Which of the options do you favour to ensure that religious bodies and celebrants do not have to register civil partnerships against their will?

Option 1 appears simpler.

Question 9 - 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?

Where premises are owned solely by the religious body and used solely by it for its own purposes, it would be reasonable to respect its right not to allow its premises to be used in this way. Where premises are made available to the public (whether commercially or otherwise) it should be clear that couples seeking a venue for a civil partnership are to be treated like any other members of the public. A religious body which owns its premises is perfectly entitled not to make that premises available to the public.

Where premises are jointly owned, it would be for the joint owners to reach a collective decision, hopefully on the basis of consensus. I agree that in general terms it may not be appropriate to legislate for these circumstances, however the consequences of that position should be well understood before a final decision is made.

Question 10 - Do you agree that the law in Scotland should be changed to allow same sex marriage?

Yes. While the introduction of Civil Partnership was an important step forward, it was always clear that a small but vocal proportion of the population would continue to portray the legal distinction as a moral one, and this has indeed continued to be the case. Many same-sex couples feel that a "separate but equal" arrangement is no kind of equality at all. Meanwhile many of those who continue to promote discrimination and prejudice on grounds of sexual orientation feel that their views are endorsed by the law.

While no piece of legislation will ever put a final end to all discrimination, marriage and civil partnership are extremely important as mechanisms by which the state recognises commitment between people, and both these mechanisms should be open to same-sex and mixed-sex couples on equal terms. It is important for the law not only to treat people equally, but to be seen to be pro-actively endorsing equality, and rejecting the notion that same-sex couples are in some way morally wanting. To continue to offer entirely separate legal status to people on the basis of sexual orientation is as absurd and insulting as would be a separate legal status in family law on grounds of race, disability or religion.

Question 11 - Do you agree that religious bodies and celebrants should not be required to solemnise same sex marriage?

My views on this are broadly the same as my views on the 'opt-out' discussed in questions 5-7. In short, the right to turn away same-sex couples will have to be respected, even though I hope that in time all religious bodies will come to accept the equal dignity and value of same-sex relationships. However it should not be for the law to enforce a religious body's internal rules on this matter by prohibiting individual celebrants; this is a matter between the individual and the body they choose to work for.

Question 12 - Do you agree with the introduction of same-sex civil marriage only?

No, I do not agree with the continued restriction of the religious freedom of those bodies which wish to welcome same-sex and mixed-sex couples on equal terms. The only way in which the law could fairly prohibit some marriages from being carried out in a religious context would be to apply this to all marriages. While I would not

personally be opposed to that fully secular arrangement, I suspect that most people would be, and it seems reasonable to respect that view. I see no appetite for the full secularisation of marriage in the general public or across the political spectrum. There is no basis for the law to require some people's relationships to be treated only in a secular manner while giving other people the freedom to choose.

Question 13 - Do you agree with the introduction of same-sex marriage, both religious and civil?

Yes. A society which gives people the option to seek a religious marriage should allow that for all couples, regardless of sexual orientation. I can see no reason, as a secular legislator, to prohibit religious bodies which wish to carry out same-sex marriages from doing so.

Questions 14, 15 and 16

My views on these questions are as expressed in the answer to question 11.

Question 17 - 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?

Option 1 appears simpler.

Question 18 - 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?

My views on this are as expressed in the answer to question 9. The issues relating to civil partnership and marriage should be seen in the same context.

Question 19 - If Scotland, should introduce same sex marriage, do you consider that civil partnerships should remain available?

Yes. One of the most important features of the debate which has followed this consultation relates to the cultural and emotional meaning of the state's recognition of relationships. While marriage is an extremely important concept to some people, for others it carries negative or undesirable connotations. The principle should be that the law respects each family on their own terms, and in this context it is every bit as important that civil partnership should be open to mixed-sex couples as it is that marriage should be open to same-sex couples.

Question 20 - Do you have any other comments?

The issues relating to transgender people, outlined in the consultation, provide further reason to ensure that civil partnership should be open to mixed-sex couples, to ensure that dissolution is not a requirement for gender recognition.

Transitional arrangements should be made available, and it would seem reasonable to allow a generous fixed period, perhaps five years, for civil partnerships to be converted into marriage, and vice versa. While the take-up for this may be low, it does

not seem unreasonable that the option be made available.

Finally, I would urge the Scottish Government to legislate as soon as draft legislation can be produced. It is clear that this debate, like others relating to LGBT equality in the past, is an intensive one. While that is generally to be welcomed, there are certain groups peddling disinformation, stereotypes and distortions as part of this debate, such as the notion that polygamous marriage will be a consequence of this change, or that religious bodies will be subject to human rights challenges to “force” them to carry out same-sex marriages. It would be regrettable, and harmful, if this nonsense was left to run for another year.

During the Section 2A debate, I was personally aware of young people reporting higher levels of homophobic bullying at school, and the use of the Keep the Clause slogan in the context of bullying. Homophobic bullying, as the Scottish Government recognises, still has a pernicious influence in our society and can destroy the life chances, and even the lives, of young people of any sexual orientation or identity. This kind of hostility should be avoided during this debate, and this would best be done by completing the legislative process in good time.

In particular, I would urge the Scottish Government to commit to see legislation introduced to Parliament in 2012 to open both marriage and civil partnership to all loving, committed couples on equal terms, and to do so regardless of the progress of this issue at UK level. Scotland has the opportunity to lead on this issue, as we did with the repeal of homophobic legislation in Session 1 of the Scottish Parliament, and the introduction of Europe's leading LGBT hate crime legislation during Session 3.

If the Scottish Government introduces this legislation, and if the Scottish Parliament agrees it as I believe it would, this would be an important marker of the kind of society – indeed the kind of country – that Scotland wishes to become in the 21st century.