

Why is same-sex marriage important?

The Equality Network is strongly of the opinion that the law should allow same-sex marriages, and, more generally, that marriage should be available to couples regardless of their genders.

In our 2009/10 survey of 427 LGBT people, 85% said that this change is needed. 53% said that implementing this change is a high priority, and a further 32% said that it is a priority. From more informal qualitative consultation, we believe that, if anything, those figures underestimate the proportion of LGBT people who consider that this change is required. At our five same-sex marriage consultation events around the country in November 2011, every one of the 150 people present agreed that same-sex marriage should be introduced.

In our survey and our consultation events we asked people why marriage should be opened up to same-sex couples. People gave a range of reasons, 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 by many as the gold standard for celebrating the joy of love and commitment. Marriage is very widely understood for its symbolism and its personal, community, and in some cases, religious significance. Very few people propose 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-sex couples access to marriage, and is seen by many same-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-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-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-sex couples.

The unfair and arbitrary nature of the current law is particularly clear when considering the situation of bisexual people. A bisexual person may fall in love with someone of the same gender or of the opposite gender – apart from the gender of the person, there is no difference in the relationship. The law directs the person to civil partnership or to marriage, with no choice, depending only on the gender of their partner.

Reducing discrimination and its effects

Although the legal effects of marriage and civil partnership are almost identical, in our 2009/10 survey, of 103 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-sex marriage would not eliminate this discrimination against same-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-sex couples as "other", and thereby promotes stigmatisation, prejudice and discrimination against

LGBT people. This includes homophobia, biphobia and transphobia in forms including bullying and hate crime. The introduction of same-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.

By reducing prejudice and discrimination, the introduction of same-sex marriage will enhance the safety, self-esteem, health and wellbeing of LGBT people in Scotland.

Discrimination against same-sex couples also affects their children. We estimate from our surveys that around 20% of same-sex couples have children, whether from a previous mixed-sex relationship, through adoption, or through assisted conception. Contrary to oft-repeated claims, research shows that children do as well with two parents of the same sex as with two parents of opposite sex [‘How does the gender of parents matter?’, Biblarz and Stacey, *Journal of Marriage and Family*, Feb 2010].

The introduction of same-sex marriage will benefit the children of same-sex couples by reducing prejudice in the ways described above.

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-sex marriage would be recognised in any other country which allowed same-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-sex marriage is discrimination against married transsexual people in the provision of legal gender recognition.

Freedom of religion and belief

Same sex couples cannot have their legal relationship solemnised by a humanist or religious celebrant. In our 2009/10 survey of 429 LGBT people, 22% said that they would consider a humanist marriage if it was available, and 22% said that they would consider a religious marriage.

Celebrants of the Humanist Society of Scotland solemnise marriages (under the religious marriage law) and very much want to be able to solemnise same-sex marriage.

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

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

Neither set of religious bodies (those that agree, and those that disagree with same-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 same-sex marriage

Civil partnerships are currently running at about 2% of the rate of (non-tourist) marriages in Scotland – approximately 500 civil partnerships per year now; and 3500 in total. The future number of same-sex marriages could be a little higher because of greater demand. The introduction of same-sex marriage will have no effect on the existing or future marriage of any mixed-sex couple – there is not a finite limited number of marriages available. Rather it could be argued that introducing same-sex marriage 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 same-sex 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 same-sex 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-sex marriage, in contrast, will not change at all the law applying to mixed-sex marriages, and is therefore 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 same-sex 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-sex marriage. The Scottish Liberal Democrats and Scottish Green Party included a pledge to introduce same-sex marriage in their 2011 Holyrood manifestos. The SNP and Labour Party included a pledge to consult on the issue.

International context

Nine western European countries surrounding us have already introduced same-sex marriage: Iceland, Norway, Sweden, Denmark, the Netherlands, Belgium, France, Spain and Portugal. Needless to say, there is no evidence from any of those countries of any of the negative consequences that some of the opponents of same-sex marriage suggest would follow [see ‘When gay people get married’, MV Lee

Badgett, New York University Press 2009]. Scotland is being left behind on this key equality issue.

Canada, New Zealand, South Africa, Argentina, Uruguay, Brazil, and a number of US and Mexican states have also introduced same-sex marriage, and the issue is under active consideration in other countries such as Australia and Luxembourg.

Scotland's international reputation with key partners will be enhanced by the introduction of same-sex marriage. Scotland (and the UK) seek to promote equality and human rights internationally, and to do this effectively we need to ensure full respect for equality and human rights at home.

This change is one whose time has come – future generations will look back with surprise that the law ever prevented same-sex couples from marrying.