



Engender submission of evidence to the Equalities and Human Rights Committee inquiry on the Civil Partnership (Scotland) Bill

1. INTRODUCTION

Engender welcomes the opportunity to restate our support for the Civil Partnership (Scotland) Bill. We previously set out our views on the subject in a response to the Scottish Government's 2015 Consultation. In that submission we outlined our support for the retention and extension of civil partnerships in Scotland, believing that diversity of options for couples was a "positive step forward in a modern Scotland, which is diverse, pluralistic and democratic." We are happy to reiterate our support for that view in 2020 and welcome the introduction of the Bill.

Extending civil partnerships will not result in any resource implications for Engender and we do not foresee the Bill having an impact upon our organisation. We have therefore focussed our answers on the Committee's questions 1 (the Bill's approach to achieving equality) and 2 (the impact on human rights or equality issues for any particular groups of people).

2. ACHIEVING EQUALITY BY MAKING CIVIL PARTNERSHIPS OPEN TO DIFFERENT SEX COUPLES

Engender recognises that equality before the law, irrespective of sex, gender identity, or sexual orientation is a vital baseline against which further progress towards women's equality and rights can be made. Current arrangements provide different options for lesbian and bisexual women to formalise same-sex relationships in Scotland, whilst denying mixed-sex couples an option for which there is established demand. As in our 2015 consultation response, we do not support reducing options for partners to make a social and legal commitment to one another, recognising that there is a diversity of views on marriage as an institution (see below.)

In our view, human rights should be an ever-advancing phenomenon, and we would not support rolling back the rights of one group – same sex couples and LGB people –

in order to 'equalise' treatment. We believe that mixed sex couples should benefit from the same options and that the choice of which form of commitment is most appropriate is one for the parties in a couple.

3. THE IMPACT OF THE BILL ON WOMEN AND HUMAN RIGHTS AND EQUALITY ISSUES

For many people, particularly women, marriage may be seen as rooted in patriarchal and outdated ideals or closely bound in religious or solemnised processes. Although marriage has evolved profoundly, anachronisms may still be seen. While many traditional elements in some marriage ceremonies, such as being given away, may be dispensed with, for those with sincerely felt ideological opposition to entering a marriage, civil partnerships may provide an alternative perceived as more equal¹ and less encumbered with traditional societal expectations of women. The Scottish Government has also recognised that some people, for example women with experience of domestic abuse within a marriage, may be more comfortable with entering a different type of commitment.

Enabling different forms of commitment to be made which provide substantively the same rights and legal protections is a marker of a diverse and pluralistic society which respects these views.

Currently couples who decide that marriage is not appropriate for them are left with the legal protections and degrees of social recognition offered by cohabitation. Despite changes introduced with the Family Law (Scotland) Act to enable claims for some financial provision on separation or bereavement, cohabitation carries fewer rights and responsibilities than marriage and civil partnerships. The Scottish Law Commission is currently investigating whether the law relating to cohabitation is in need of reform, and whether it is comprehensive enough to offer sufficient protection and clarity to couples.²

Women have less access to resources, assets and income, due to systemic issues that include unpaid caring roles, the gender pay gap, violence against women and unequal representation and women are also more likely to experience domestic abuse.

The lesser legal protections of cohabitation are more likely to negatively impact their rights and security. However, it is also important to stress that discussions about the

¹ Equality Network *Civil Partnerships should be open to couples regardless of gender* Equality Network (<https://www.equality-network.org/civil-partnership-should-be-open-to-couples-regardless-of-gender/>)

² Scottish Law Commission *Law Reform Project: Aspects of Family Law* Scottish Law Commission (<https://www.scotlawcom.gov.uk/law-reform/law-reform-projects/aspects-of-family-law/>)

precise rights associated with cohabitation are not directly relevant to the Bill and should be considered on their own merit. However, there are people in Scotland who wish both to have enhanced legal rights, but not to enter into the institution of marriage. Increased choice where marriage and cohabitation are considered unsuitable arrangements seem likely to benefit women as well as their dependent children.

4. CONSEQUENTIAL CHANGES AND ADDITIONAL COMMENTS

Engender welcomes the proposals to create an offence of forced civil partnerships. We also foresee the benefits of the introduction of mixed sex civil partnerships as having a positive impact for trans women and trans men and their partners who wish to remain in the formalised relationship they entered prior to transition, and support the consequential amendments to the Gender Recognition Act. We take no view at this stage on the consequential changes to other pieces of legislation.

5. CONCLUSION

Engender views the retention and extension of civil partnerships in Scotland as an equality issue, noting that there is clear demand from both same sex and mixed sex couples for them. Even if overall demand was ultimately low, we believe that the need for legal and symbolic equality should be of primary concern. We believe that increasing the options for legal recognition of relationships with appropriate, equal rights and protections is likely to have a benefit for women and provide alternatives for those who have preference for an institution without the patriarchal and heteronormative associations of marriage.

FOR FURTHER INFORMATION

Contact: Eilidh Dickson, Policy and Parliamentary Manager, Engender
Email: eilidh.dickson@engender.org.uk

ABOUT US

Engender is a membership organisation working on feminist agendas in Scotland and Europe, to increase women's power and influence and to make visible the impact of sexism on women, men and society. We provide support to individuals, organisations and institutions who seek to achieve gender equality and justice.