

Amendment of the Marriage (Scotland) Act 1977:

Today the LGBT Network submitted its petition to the Scottish Parliament, calling for the Marriage (Scotland) Act of 1977¹ to be amended to allow two persons of the same sex to register a civil marriage and to register a religious marriage, where the particular faith institution allowed it. In short; to bring marriage equality to Scotland.

The Civil Partnership Act of 2004² was passed by Westminster for the whole of the UK. The Scottish Executive consented to Westminster legislating a Scottish section within the Act. When a Civil Partnership is registered, the law mandates that it is performed in a secular manner. Therefore gay people of faith whose religion may wish to celebrate their marriage are not allowed to have that done. Nor does the Act offer any provision for a ceremony to be held when the partnership is signed, as opposed to marriage where words have to be spoken as well as the register signed.

The Scottish Parliament was founded on the value of equality; that every citizen is entitled to the same rights as all others, and to be respected and protected by the government we elect. Although the Civil Partnership Act was and is groundbreaking, the status quo remains that there is one law for straight couples and another law for gay couples. The fact that they have equal status does not detract from the fact that they are separate and different.

If we truly believe in equality; if we actually want to live in a society where citizens are treated the same no matter what their sexuality, then allowing separate but equal to remain the law of the land simply cannot stand. The era of discrimination and segregation based on the colour of a persons' skin began to be dismantled with the US Supreme Court ruling that "separate but equal is inherently unequal."³

Yet more than 50 years later, we are still denied access to the basic institution of marriage in the UK. Instead we have been given something that although is considered equal under the law, is also considered separate. A gay couple that is legally married in Spain or South Africa has thier marriage changed to a civil partnership when they come to the UK. A British couple went to the High Court in 2006, seeking to have their legally valid Canadian marriage recognised as such under UK law, just as heterosexual marriages are recognised no matter where they are performed in the world. Sir Mark Potter, the High Court Judge rejected their plea in *Wilkinson v. Kitzinger*⁴. In his judgement he stated how civil partnerships were indeed different from marriage, and that the government, in denying gay couples the right to marry, was engaging in a legitimate attempt to protect marriage and family life. He also effectively fined the couple £25,000 by making them pay the governments legal costs.

¹ http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1977/cukpga_19770015_en_1

² http://www.opsi.gov.uk/acts/acts2004/ukpga_20040033_en_1.htm

³ <http://www.archives.gov/education/lessons/brown-v-board/timeline.html>

⁴ <http://www.baillii.org/ew/cases/EWHC/Fam/2006/2022.html>

More recently in October 2008, Lord Bach, the Parliamentary Under Secretary of State in the Ministry of Justice reaffirmed the British governments opposition to same sex marriage. He states that when the government passed the bill “we made a distinction in it and did not call single-sex partnerships marriage... it did not call those partnerships marriage, and that remains the Government’s policy.”⁵

That blatant inequality is incompatible with the values of the Scottish Parliament. It conflicts with the principles of Scottish law, and is contradictory to the inalienable rights of every citizen.

The definition of marriage is not static; it changes as our society does. For many centuries, marriage was a mere contract to better the position of one family or to remove rivalry with another. Our interpretation of what constitutes a relationship has progressed from a wife being considered little more than the property of her husband to a partnership of equals; and our society now stands at the point where it affords equal protection to couples regardless of gender. So what then are the reasons for allowing only marriage for straight couples and civil partnership for gay couples? If they are really the same, why are there two different laws and two different forms to fill in at the registrar’s office?

The word marriage evokes timeless values of love and commitment, and it radiates a clarity of status in society as well as a subtle collection of personal, social and spiritual meanings that two people are united in all aspects of their life. Marriage is the strongest word we have for a declaration of total love and commitment to one another; and to deny any person that opportunity is to deny the full measure of dignity and humanity that we are all endowed with.

Can our society not be one where two people decide what status is best for them? Straight couples who wish to get married already get the choice between having a religious or civil ceremony. But of course there are some straight couples who would balk at the thought of even entering into a civil marriage, and would perhaps prefer a civil partnership, free of some of the associations and imagery that marriage brings. Just as how there are gay couples, who embrace the concept of marriage, and wish to celebrate their love by entering into this ancient institution, be that as a civil ceremony or one conducted by a progressive religion.

By denying same sex couples the right to marry on the grounds that some religions are opposed to it, enshrines that particular religious dogma into law, and ignores the diversity of faith groups that exist who would willingly marry two people of the same sex. In terms of performing religious marriage, it must be up to that particular faith to decide who to marry, not any government or parliament. Our 21st century state must respect the pluralism of belief and the diversity of faith that exists in Britain.

This petition is but one small step in the road to full equality and participation in every aspect of society. As we have seen from the battles over same sex marriage in the United States, there are those who will spend all they can and will fight to the very last to prevent gay couples being married. This does not mean we should run from the fight. We should not be afraid of standing up for what we believe in just because someone else is preparing to knock us down. And we should never be willing to compromise on our fundamental values, on our basic human rights or on our belief in the morality of equality.

⁵ <http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/81023-0001.htm>

This makes it incumbent on all of us who wish to live in a more equal world that we do not let someone else fight for a right we wish to enjoy. This is not the LGBT Networks campaign for marriage equality, this is simply a petition we thought was a good idea.

The campaign must come from all of us; from the group of friends who debate amongst themselves whether they would really be happy with a civil partnership; from the young person who isn't happy to accept she is growing up in a country that won't afford her the same rights enjoyed by others; and from the happy couple who go down to the registry office, and instead of asking for civil partnership documents, demand that they be allowed to marry.

Some will say that there are more important things to do, and in some ways that's true. But we can do more than one thing at a time. Putting your name to a petition or starting a conversation doesn't detract from anything else that needs done.

But change doesn't just happen. If we want it, we have to act like it. We have to stand up to those that say marriage should only be for straight people, or that civil partnerships are enough for us or don't rock the boat too much in case some people don't agree. Of course there are going to be people who are against this, but we should never shrink from the fight just because we might get hit.

In 2009, the 40th anniversary of the Stonewall Rebellion, I think about those courageous individuals who fought hand to hand with the police, to assert their right to exist, to be themselves openly and to be with the people they love, free from intimidation and harassment. Their legacy is not the laws that favour us, but our desire, our passion, and our right to be equal.

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