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The Scottish Parliament
EDINBURGH
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PE1239/N
PE1269/A



30 September 2009

Frank

CONSIDERATION OF PETITIONS PE1239 AND PE1269

PE 1239. Petition by Nick Henderson, on behalf of LGBT Network, calling on the Scottish Parliament to urge the Scottish Government to amend the Marriage (Scotland) Act 1977 to allow two persons of the same sex to register a civil marriage and a religious marriage if the relevant religious body consents

PE 1269. Petition by Tom French, on behalf of the Equal Marriage Campaign, calling on the Scottish Parliament to urge the Scottish Government to amend legislation to allow same-sex marriage and mixed-sex civil partnership.

I refer to the letter dated 9 September from Fergus Cochrane to Anna Winters. I am replying to respond to the questions raised.

As we have indicated previously, the changes sought by the petitioners would require primary legislation and the Scottish Government has no current intention of introducing legislation in this area. The Committee have asked whether the Government will conduct research to ascertain how the constitutional difficulties attached to same sex marriage can be resolved.

We do not think it necessary to conduct research in this area as we are already aware of what the constitutional issues are. The Civil Partnership Act made a number of changes to legislation that is reserved to the UK Parliament such as immigration, taxation and tax credits, social security and pensions. If the intention is to ensure that partners entering into a same-sex marriage have the same rights as those entering into a civil partnership, the UK Government would need to change legislation for which they are responsible.

As has been pointed out already, there are a number of ways by which the UK Government could change legislation for which they are responsible. However, regardless of what way is

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chosen, the UK Government would need to agree to change the legislation. We have spoken to the UK Ministry of Justice and we understand that the UK Government is opposed to the introduction of same-sex marriage in the UK (any same-sex marriages legally contracted in other jurisdictions are not recognised as marriage in the UK but as civil partnerships). Given this, it seems unlikely that the UK Government would change reserved legislation if the Scottish Parliament should legislate for same-sex marriage.

Therefore, if the Scottish Parliament should legislate for same-sex marriage, couples could find that those in civil partnerships would have more rights than those in a same-sex marriage.

In addition, if the Scottish Parliament should legislate for same-sex marriage, the UK Government (and the Northern Ireland Executive) would need to decide if such marriages would be recognised elsewhere in the UK (not just for reserved matters, but generally). There is no guarantee that such recognition would be forthcoming.

Finally, the Committee asked us to provide an update on how the outcome of Schalk and Kopf v Austria will affect our policy in this area. We do not have full information on when Schalk and Kopf v Austria will be decided but we expect this will happen within a year. The Scottish Government will provide the Committee with further information once the case is decided.

Yours sincerely



FERGUS EWING