

ANNEX I: QUESTIONNAIRE

RESPONDENT INFORMATION FORM

Please note: this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name (if applicable)

Centre for Excellence for Looked After Children in Scotland (CELCIS)

Title: Mr Ms Mrs Miss Dr

Surname Hill

Forename Louise

2. Contact details

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Email Louise.Hill@strath.ac.uk

3. Which country are you resident in? (please select one of the options below)

Scotland

Rest of the UK

Rest of the World

4. Permissions - I am responding as...

Individual

Group/Organisation

Please tick as appropriate

The Scottish Government generally seeks to publish responses to a consultation, in summary and, where possible, in detail. We would like your permission to publish:

Please tick ONE of the following boxes

Your name along with your response

or

Just your response (anonymous)

or

Please do not publish my response at all

The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on this site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

Are you content for Scottish Government to contact you again in relation to this consultation?

Please tick as appropriate Yes No

CONSULTATION QUESTIONS

These consultation questions seek views on the detail of the legislation that will: introduce same sex marriage; allow civil partnerships to be registered through religious or belief ceremonies; and make other changes to marriage law. Further information on the detail of the legislation is available below each question (see 'more information') and in the consultation paper.

There is no obligation to answer all of the questions – you may answer as many or as few as you like.

Impact assessments

Question 1 (Paragraphs 1.14 to 1.17 and Annexes J and K).

Do you have any comments on the impact assessments prepared in relation to the proposed legislation?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

We would have welcomed the publication of a Child Rights Impact Assessment to be produced for this new legislation. The Scottish Government committed to developing Child Rights Impact Assessment in their progress report on children's rights in Scotland, *Do the Right Thing* (2012). There are clearly many implications of this legislation that impact on children and young people:

More specifically, the United Nations Convention on the Rights of the Child 1989, ratified by the UK Government sets out:

- Article 2 - Non-discrimination – No child should be treated unfairly on any grounds, including due to their sexuality or that of their family
- Article 3 – The best of interest of the child are of primary concern
- Article 12 – The right to express a view
- Article 13 – Freedom of expression
- Article 14 – Freedom of thought, conscious and religion
- Article 17 – Right to access information that is important for their health and wellbeing
- Article 19 – Protection from all forms of violence
- Article 20 - Children deprived of family environment: Children who cannot be looked after by their own family have a right to special care and must be looked after properly, by people who respect their ethnic group, religion, culture and language.
- Article 24 – Right to good quality health care
- Article 28 & 29 – Right to education and aspiration of education to fulfil every child's talents, personality and abilities to the fullest.

We specifically recognise the rights of children and young people to live their lives free from prejudice and discrimination on any grounds, including their own or family member's sexuality. We strongly support the work of the Scottish Youth Parliament in listening and *acting on* the key issues raised by young people themselves through their 'Love Equally' campaign.

General changes to marriage law

Question 2 (Paragraphs 2.02 to 2.04)

Do you have any comments on allowing opposite sex and same sex civil marriage ceremonies to take place anywhere agreed between the registrar and the couple, other than religious premises?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

On the grounds of equality, we support this proposal.

Question 3 (Paragraphs 2.05 to 2.10)

Do you have any comments on establishing belief ceremonies as a third type of ceremony, alongside religious and civil, for getting married in Scotland?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Question 4 (Paragraphs 2.11 to 2.14)

Do you have any comments on amending section 8 of the Marriage (Scotland) Act 1977 so that Church of Scotland deacons are authorised automatically to solemnise opposite sex marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

On the grounds of equality, we support this proposal.

Question 5 (Paragraphs 2.15 to 2.21)

Do you have any comments on establishing tests that a religious or belief body must meet before its celebrants can be authorised to solemnise marriage or register civil partnership?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Question 6 (Paragraphs 2.28 to 2.31)

Do you have any comments on abolishing the concept of marriage by cohabitation with habit and repute where a couple erroneously believed themselves to be married but it transpired after one of them died that the marriage was not valid?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Same sex marriage

Question 7 (Paragraphs 3.03 to 3.07 and Annex A)

Do you have any comments on the proposals for authorising religious and belief celebrants who wish to solemnise same sex marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

On the grounds of equality, we support this proposal.

Question 8 (Paragraphs 3.08 to 3.10)

Do you have any comments on opt-outs for civil registrars who do not wish to solemnise same sex marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

We are uncertain whether they should be a legal precedent for public servants to 'opt out' of certain civil duties. We would be concerned at the message this would convey in equally valuing relationships. We are in agreement with the Government that this is not appropriate.

Question 9 (Paragraph 3.11 and Annex B)

Do you have any comments on the proposed approach in relation to freedom of speech?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Question 10 (Paragraphs 3.12 and 3.13 and Annex C)

Do you have any comments on the proposals in relation to education and same sex marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

The provision of non-discriminatory education for children and young people is vital. We would like to see a stronger rights-based approach to education. The emphasis on parental right to withdraw children overlooks children's right to access information, to express their own views and to not face discrimination. The experience of homophobic bullying of young people (directed at themselves or family members) is unacceptable. Through challenging prejudice, we need to increase recognition of the many different relationships that occur and are equally valued in our society.

As stated in response to Question, one the United Nations Convention on the Rights of the Child 1989, ratified by the UK Government sets out:

- **Article 2 - Non-discrimination – no child should be treated unfairly on any grounds, including due to their sexuality or that of their family**
- Article 3 – The best of interest of the child are of primary concern
- **Article 12 – The right to express a view**
- Article 13 –Freedom of expression
- Article 14 – Freedom of thought, conscious and religion
- **Article 17 – Right to access information that is important for their health and wellbeing**
- **Article 19 – Protection from all forms of violence**
- Article 20 - Children deprived of family environment: Children who cannot be looked after by their own family have a right to special care and must be looked after properly, by people who respect their ethnic group, religion, culture and language.
- Article 24 – Right to good quality health care
- Article 28 & 29 – Right to education and aspiration of education to fulfil every child's talents, personality and abilities to the fullest.

Question 11 (Paragraphs 3.21 to 3.29)

Do you have any comments on the proposals on the impact of same sex marriage on legislation, the common law or on private arrangements?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

We welcome the acknowledgement of the diversity of foster carers and adoptive parents from many different ethnic, religious and cultural backgrounds can provide loving and stable environments for children and young people. We would be highly concerned if any child or young person who was LGBT was not fully respected, valued and included in their family home or alternative care placement. We would have some concerns about amending guidance to state that a potential carer's religious beliefs or views on equal marriage should not be a reason to disbar them from being a foster carer. As regulations no longer set out different categories of people with whom a child may be fostered, amending guidance to state that Christians or people with particular views about marriage can foster children may lead to it becoming necessary to list numerous other categories of people whose beliefs and views about particular issues are also not ruled out of becoming foster carers. This would seem unnecessary and potentially problematic.

Question 12 (Paragraphs 3.21 to 3.29)

Are you aware of legislation where there is a need to make it clear that references to marriage or spouse should not extend to both opposite sex and same sex marriages or spouses?

If you are, please give details of the legislation and explain why it should not extend in this way. If not, please leave the box blank and go to the next question.

Your comments

Equality is the underlying principle.

Question 13 (Paragraph 3.31 to 3.33)

Do you have any comments on the proposed approach to the law on adultery?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Question 14 (Paragraphs 3.35 and 3.36)

Do you have any comments on the proposed approach to the law on permanent and incurable impotency?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Question 15 (Paragraphs 3.41 to 3.47)

Do you have any comments on the proposed approach to the law on bigamy?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Civil partnership

Question 16 (Paragraph 4.01 to 4.04)

Do you have any comments on the proposed approach to ensuring that religious and belief bodies and celebrants do not have to register civil partnerships?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Question 17 (Paragraph 4.05 to 4.11)

Do you have any comments on the proposals for changing civil partnerships to a marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

The potential for civil partnerships to change to marriage if that is a couple's preference is fair.

Transgender people

Question 18 (Paragraphs 5.01 to 5.06 and Annex D).

Do you have any comments on the detailed proposals for allowing transgender people in a relationship to stay together, if they and their partner so wish, when obtaining the full Gender Recognition Certificate?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

**Scottish Government
December 2012**