

RESPONSE FORM

PREPARATION OF THE TENTH PROGRAMME OF LAW REFORM

We hope that by using this form it will be easier for you to respond to the questions set out in the consultation paper. Respondents who wish to address only some of the questions may do so. The form reproduces the questions as set out in the paper and allows you to enter comments in a box after each one. At the end of the form, there is also space for any general comments you may have.

Please note that information about this consultation paper, including copies of responses, may be made available in terms of the Freedom of Information (Scotland) Act 2002. Any confidential response will be dealt with in accordance with the 2002 Act.

We may also (i) publish responses on our website (either in full or in some other way such as re-formatted or summarised); and (ii) attribute comments and publish a list of respondents' names.

In order to access any box for comments, press the shortcut key F11 and it will take you to the next box you wish to enter text into. If you are commenting on only one or two of the questions, continue using F11 until you arrive at the box you wish to access. To return to a previous box press Ctrl+Page Up or press Ctrl+Home to return to the beginning of the form.

Please save the completed response form to your own system as a Word document and send it as an email attachment to info@scotlawcom.gsi.gov.uk. Comments not on the response form may be submitted via said email address or by using the [general comments form](#) on our website. If you prefer you can send comments by post to the Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR.

Name: Mrs Akri Jones
Organisation: N/A
Address:
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Questions

1. Do you have any suitable law reform projects to suggest?

Comments on Question 1

To urge The Scottish Law Commission to amend the current definition of adultery within legislation so that it is not restrictive to gender status.

2. Do you have any project to suggest that would be suitable for the Commission Bill process in the Scottish Parliament; or, in relation to reserved matters, for the House of Lords procedure for Commission Bills?

Comments on Question 2

I am the petitioner for PE01624 (2016) and PE01536 (2014): Definition of Adultery, that was presented before the Public Petitions Committee, Scottish Parliament.

The current definition of adultery is defined in common law as voluntary sexual intercourse between a spouse and a person of the opposite sex out-with the marriage. The definition does not include or extended to spouses, whether they are in heterosexual and same-sex marriages, that have become involved in same-sex extra-marital relationships. Therefore, adultery cannot be cited as grounds of divorce under The Divorce (Scotland) Act 1976 as it cannot be applied in same-sex extra-marital relationships. It is evident that the adultery laws are out-dated. The same equality principles that has resulted in legalising the right to marry for same-sex couples, likewise, adultery laws need to be amended that is in keeping with human rights and equality legislation.

My project proposal is to amend the current definition of adultery under law, or to bring forward new legislation that would address adultery laws in the context of same-sex extra-marital relationships to which injured spouses can cite the grounds of adultery for divorce. The proposal of new legislation could also be extended to address the area of deception in the context if a spouse has deliberately misled their spouse about their sexual orientation, and include damages for injured spouses in such instances.

3. If suggesting a new project:-

- (a) Please provide us with information about the issues with the law that you have identified:

The Human Rights Act 1998 has meant that all UK legislation must be read and applied in a way that protects a person's human rights. As the law currently stands on the definition of adultery, it infringes on the fundamental human right under Article 1 Universal Declaration on Human Rights that states "all human beings are born free and equal in dignity and rights." Another important argument is that of religion and the protection of religious beliefs

under Article 9; the current definition of adultery prohibits a person to exercise this right when their religion states that adultery needs to be cited as grounds for divorce, and this is reinforced by Article 8 the protection of morals. In addition, Article 14 requires there be no discrimination in the application of human rights on any ground.

(b) Please provide us with information about the impact this is having in practice:

As the law currently stands regarding the definition of adultery there is no equality in adultery laws. A person has the right to marry the way that they choose, therefore, they should have the right to choose how they divorce. The restrictive definition of adultery does not permit this, this is a direct discrimination as it treats one part of society less favourably than another, placing one part of society at a disadvantage, being a direct breach of Equality Act 2010, in particular Article 13 (1), Article 27 (5), and Article 19. Additionally, it can be viewed as a form of sexual orientation discrimination; in that the innocent party who has had their spouse involved in a heterosexual extra-marital relationship are treated more favourably as they have the right to cite the grounds of adultery for divorce compared to innocent party who has had a spouse involved in same-sex extra-marital relationship who cannot cite adultery.

Using 'unreasonable behaviour' as an alternative to adultery under the current legislation does not quite address the issue which is marriage equality should mean equality in all respects, there should be no violation to this fundamental principle. Furthermore, unreasonable behaviour can be defined very widely as it does not only apply to infidelity, it has been used as common grounds for divorce in UK divorce law for incidents that covers antisocial behaviour, domestic violence, substance misuse, not financially providing, work alcoholic, running up debts etc. To the innocent party that has been injured due to the unfaithfulness of a spouse, it is important that they are able to dissolve the marriage on the grounds of adultery and for the law to not be the cause of a further injustice and duress to them.

(c) Please provide us with information about the potential benefits of law reform:

The amending of the definition of adultery will bring about equality in all aspects of marriage and protect human rights as highlighted above.

General Comments

My intention is not to see the adultery laws abolished – I am a Christian myself, and I am proud to call myself a Christian. In a world where morals are on the decline, as a society we need to 'safeguard' our morals more than ever. Marriage is one of the most important institutions in our society, faithfulness is an intrinsic part of marriage and the law of adultery upholds this belief. Removing the adultery laws will affect the moral fibre of our society, it will leave a legacy to future generations that unfaithfulness is acceptable, devalue the importance of faithfulness within a marriage, that adultery does matter and does not cause harm to the innocent party. Consequently, this may lead to an increase in divorce rates placing further pressure on existing services, and the divorce law will eventually slide more

towards a fully no-fault system.

For interest, following the introduction of same-sex marriages in other countries, efforts are being made to amend the definition of adultery. In the USA, the submission of House Bill 2352 dubbed as 'My Husband's Lovers Bill' seeks to broaden the definition of adultery under Article 333 of the Revised Penal Code to include same-sex extramarital relationships.

Thank you for taking the time to respond to this consultation paper. Your suggestions and comments are appreciated and will be taken into consideration when preparing our Tenth Programme of Law Reform.