

PE1624/A

Scottish Government Letter of 12 January 2017

The Scottish Government is grateful to Sigrid Robinson, the Assistant Clerk to the Committee, for her letter of 9 December 2016. The petition calls on the Scottish Parliament to urge the Scottish Government to amend the current definition of adultery within legislation so that it not restrictive to gender status. Ms Robinson's letter asked for the Scottish Government's view on the petition and whether we intend to legislate on this issue in the current session of the Scottish Parliament.

We have carefully considered this Petition. For the reasons outlined below, we do not intend to legislate on the definition of adultery in the current session of the Scottish Parliament.

First of all, the issue of the definition of adultery was considered recently when what is now the Marriage and Civil Partnership (Scotland) Act 2014 went through Parliament. The Scottish Government outlined its position in the Policy Memorandum at the time and we have not changed our position.

Secondly, divorce on the basis of unreasonable behaviour remains available when there is sexual infidelity in a marriage which does not amount to adultery.

Thirdly, the definition of adultery is for the purposes of the Divorce (Scotland) Act 1976. A divorced person can, of course, remarry in Scotland, so long as there is no other legal impediment to a marriage. A religious body may have its own views or doctrine on what constitutes adultery. That is entirely for the religious body. The definition in legislation is for the purposes of the 1976 Act and this does not stop religious bodies from having their own views or doctrines.

Finally, if the legal definition of adultery should be extended, it may be difficult to determine exactly what conduct should constitute adultery. It is likely that the Scottish Government would need to consult on the issue. It is doubtful that consensus would be achieved. The value of any such consultation is debatable, given that, as indicated above, divorce on the basis of unreasonable behaviour remains available.