

SCOTTISH GOVERNMENT CONSULTATION ON THE REGISTRATION OF CIVIL PARTNERSHIPS AND SAME SEX MARRIAGE

RESPONSE OF THE FAITH AND ORDER BOARD OF THE GENERAL SYNOD OF THE SCOTTISH EPISCOPAL CHURCH

Introduction

This document constitutes the response of the Faith and Order Board of the General Synod of the Scottish Episcopal Church to the Scottish Government's Consultation Paper on the registration of civil partnerships and same sex marriage. The General Synod is the governing body of the Scottish Episcopal Church. Matters of doctrine, liturgy and canons fall within the remit of the Board and accordingly the Board is the appropriate body to make a response to the Consultation on behalf of the General Synod.

The nature and format of the Consultation Paper are such that framing a response in the timescale allowed is not an easy matter for the Church. The approach adopted by the paper and the questions it asks are not necessarily the way the Church would seek to approach the issues in question. In a secular state, we suggest that the job of a Parliament is to legislate for what it perceives to be the good of the whole. It should defend religious freedom but should not make assumptions about religious faith nor automatically defer to it. Religious bodies should be free to participate actively in public debate and to advocate what they believe to be for the good of the whole.

Generally speaking, the General Synod of the Scottish Episcopal Church acts to bind the Church by the adoption of Canons. Where a matter is regulated by Canon, the mind of the Church can be taken to have been expressed through the Canon (albeit that that does not mean that there may not be contrary or alternative views within the Church on the subject matter in question). Consequently, responding to the Government's Consultation on the registration of civil partnerships and same sex marriage inevitably involves consideration of relevant Canons. It should, however, also be observed that the Church has a process for changing its Canons through a consultative process, involving both its General Synod and Diocesan Synods, to enable it to respond effectively as it carries out the work of mission in the world.

In considering this response to the Consultation, it should also be noted that the Scottish Episcopal Church, as a member of the Anglican Communion, is in communion with Anglican and Episcopal Churches across the world. It is also a member of the Porvoo Communion which comprises the Anglican Churches in Britain and Ireland, the Scandinavian Lutheran Churches and the Evangelical-Lutheran Churches of the Baltic States. The general issues raised by the Consultation document are matters which are already the subject of discussion in the context of the Anglican and Porvoo Communion and in which the Scottish Episcopal Church plays its part. Within those Communion, and within the Scottish Episcopal Church, the blessing of same sex unions is a matter on which there is a variety of views. Within the Porvoo Communion, for example, one Lutheran Church has altered its understanding of marriage to include the possibility of marriage between two members of the same sex. In responding to the Consultation Paper on the basis of the Church's Canons, it is recognised

that some individual members of the Church and some other Christian denominations may hold significantly different views. The timescale of the Consultation has not permitted a full debate within the Church of the issues raised.

Civil Partnerships

Question 1: Do you agree that legislation should be changed so that civil partnerships could be registered through religious ceremonies?

Legislation on Civil Partnerships is a matter for the civil authorities. The Church's present canonical position means that a civil partnership could not be registered through a religious ceremony within the Scottish Episcopal Church without an appropriate form of liturgy for such a ceremony. Canon 22 of the Church's Canons provides that, subject to certain exceptions, the conduct of divine worship and the administration of the sacraments and other rites and ceremonies of the Church must at all times be in accordance with the authorised services of the Church. The current authorised services include liturgies for marriage but not for same sex unions.

As mentioned above, the question of the blessing of same sex unions is a matter of continuing discussion within the Communion of which the Scottish Episcopal Church is part.

If the Parliament passed legislation so that civil partnerships could be registered through religious ceremonies, the Church would require safeguards to ensure such legislation did not require it or its clergy to perform such religious ceremonies.

Question 2: Do you think that the proposals in England and Wales on registration of civil partnerships in religious premises would be appropriate for Scotland?

No. We consider it would be inappropriate for civil registrars to carry out official duties on religious premises.

Question 3: Do you agree with allowing religious celebrants to register civil partnerships in religious premises?

No, for the same reason as is stated in response to Question 1 above.

Question 4: Do you agree with allowing religious celebrants to register civil partnerships in other places agreed between the celebrant and the couple?

No, for the same reason as is stated in response to Question 1 above.

Question 5: Do you agree that religious bodies should not be required to register civil partnerships?

Yes. We support the statement contained in the ministerial foreword to the Consultation Paper, and repeated in a number of public pronouncements since the issue of the Paper, that 'no religious body or its celebrants should be required to carry out same sex marriages or civil partnership ceremonies'. Were the law to be changed, we would regard it as essential that neither religious bodies nor religious celebrants be required to register civil partnerships.

Question 6: Do you consider that religious celebrants should not be allowed to register civil partnerships if their religious body has decided against registering civil partnerships?

We agree that religious celebrants should not be allowed to register civil partnerships if their religious body has decided against registering civil partnerships. Clergy in the Scottish Episcopal Church upon ordination, and upon being authorised to minister, confirm their obedience to the requirements of the Canons of the Church. For the State to enact legislation authorising clergy to act against the internal discipline of their denomination would appear to constitute an unwarranted intrusion into the internal affairs of a religious body. Whilst we recognise that some religious bodies may not have a central decision making structure (in which case, decisions by definition must be made locally), that is quite different from the position where a religious body has arrived at a view on the registering of civil partnerships for the body as a whole.

Question 7: Do you agree that individual religious celebrants should not be required to register civil partnerships?

As indicated in response to Question 5 above, we support the view expressed in the ministerial foreword that neither religious bodies nor their celebrants should be required to carry out civil partnerships.

Question 8: Which of the options do you favour to ensure that religious bodies and celebrants do not have to register civil partnerships against their will?

If the law were altered to allow civil partnerships to be registered on religious premises, we would favour Option 2 as the appropriate procedure. However, if the Church were to alter its Canons to reflect this, our preferred option would be to include within Option 2 a facility which would allow the Church, if it wished, to opt in on a “blanket” basis. This latter facility would then allow the Church, if it so wished, to treat matters on a similar basis to that which currently pertains in relation to marriage.

Whichever option might be adopted, we would also wish to emphasise the need to ensure that any provision to the effect that neither religious bodies nor religious celebrants should be required to register civil partnerships against their will, be wholly effective under the law. Consequently, if an amendment to the Equality Act 2010, or any other legislative provision, were to be needed to ensure such effectiveness, it would be important that such alteration be in place before the coming into force of any legislation permitting civil partnerships to be registered on religious premises in Scotland.

Question 9: Religious bodies may not wish their premises to be used to register civil partnerships. Do you agree that no legislative provision is required to ensure religious premises cannot be used against the wishes of the relevant religious body?

We agree that no legislative provision is required and that matters should be dealt with internally within religious bodies or, in the case of shared premises, in agreements between the religious bodies in question.

Same Sex Marriage

Question 10: Do you agree that the law in Scotland should be changed to allow same sex marriage?

The Canons of the Scottish Episcopal Church (Canon 31) state that the doctrine of the Church is that marriage is ‘a physical, spiritual and mystical union of one man and one woman created by their mutual consent of heart, mind and will thereto, and as a holy and lifelong estate instituted of God’. In the light of that Canon, there is no current basis for agreeing that the law should be changed to view marriage as possible between two people of the same sex.

As mentioned above in the introduction and in response to Question 1, the question of same sex unions in general is the subject of discussion within the Anglican and Porvoo Communion. Within those Communion, and within the Scottish Episcopal Church, the blessing of same sex unions is a matter on which there is a variety of views.

Question 11: Do you agree that religious bodies and celebrants should not be required to solemnise same sex marriage?

We agree that religious bodies and celebrants should not be required to solemnise same sex marriage. The considerations outlined in our response to Questions 5 and 7 above equally apply to this Question. In particular, we would wish to emphasise the need to ensure that any provision to the effect that neither religious bodies nor religious celebrants should be required to solemnise same sex marriage, be wholly effective under the law. Consequently, if an amendment to the Equality Act 2010, or any other legislative provision, were to be needed to ensure such effectiveness, such alteration would need to be in place before the coming into force of any legislation permitting same sex marriage in Scotland.

Question 12: Do you agree with the introduction of same-sex civil marriage only?

In the light of the canonical position explained in response to Question 10 above, we do not agree with the introduction of same sex marriage whether religious or civil. The Canon draws no distinction between civil and religious marriage in that respect.

Question 13: Do you agree with the introduction of same sex marriage, both religious and civil.

For the reasons given in response to Question 10 above, we do not agree with the introduction of same sex marriage either religious or civil. We note, again, however, continuing discussion of the issue within the Communion of which the Scottish Episcopal Church is part.

Question 14: Do you agree that religious bodies should not be required to solemnise same sex marriage?

This question appears to overlap with Question 11. We agree that religious bodies should not be required to solemnise same sex marriage for the same reasons given in relation to Question 11. Our comments in response to Question 11 regarding the need for effective legislative provision equally apply to this question.

Question 15: Do you consider that religious celebrants should not be allowed to solemnise same sex marriage if their religious body has decided against solemnising same sex marriage?

For the same reasons as are given in response to Question 6 above, we agree that religious celebrants should not be allowed to solemnise same sex marriage if their religious body has decided against solemnising same sex marriage.

Question 16: Do you agree that individual religious celebrants should not be required to solemnise same sex marriage?

This question appears to overlap with Question 11. We agree that individual religious celebrants should not be required to solemnise same sex marriage, even if the celebrant's religious body were to be willing to do so. We support the view expressed in the ministerial foreword to the Consultation Paper that neither religious bodies nor celebrants should be required to carry out same sex marriage.

Question 17: Which of the options do you favour to ensure that religious bodies and celebrants do not have to solemnise same sex marriage against their will?

If the law were to be changed to permit the solemnising of same sex marriage, our comments in response to Question 8 apply equally to this question.

Question 18: Religious bodies may not wish their premises to be used to solemnise same sex marriage. Do you agree that no legislative provision is required to ensure that religious premises cannot be used against the wishes of the relevant religious body?

We agree that no legislative provision is required and that matters should be dealt with internally within religious bodies or, in the case of shared premises, in agreements between the religious bodies in question.

Question 19: If Scotland should introduce same sex marriage, do you consider that civil partnerships should remain available?

We consider that if same sex marriage were to be introduced, it would be appropriate for civil partnerships to remain available. It is the case that, if the option of same sex marriage were to become available, some same sex couples would wish to become married. However, even if that option were to become available, there would be some same sex couples who would not regard marriage as an appropriate option for a same sex couple (because, for example, they viewed marriage as appropriate only for a couple of the opposite sex). It would, therefore, be appropriate for civil partnerships to remain as an option available for such couples.

Question 20: Do you have any other comments?

We do not wish to make any other comments except that, should the Scottish Government decide to proceed with legislation on either the registration of civil partnerships on religious premises or on same sex marriage, we ask that any draft Bill be available for wide consultation, subject to a realistic timescale in order to allow for proper consideration of the contents of any such Bill.

Faith and Order Board
General Synod of the Scottish Episcopal Church

6th December 2011