

# **SCOTTISH GOVERNMENT CONSULTATION ON THE MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL**

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

### **Introduction**

The Scottish Episcopal Church serves all parts of the Scottish community and has members from a wide variety of background and geography. The Church has also sought to be an open and welcoming community, encouraging theological discussion and honest conversation while acknowledging the difficulties such conversation can cause. This has created a vibrant and diverse church and within the Scottish Episcopal Church there is a membership with a wide range of theological and doctrinal viewpoints. The Church has also gained considerable experience in working with this diversity, listening to the often opposing views of faithful people, honouring the right to open discussion while still having the ability to reach decisions.

The present public debate on issues of sexuality, marriage and inclusiveness is one which we are attempting to address in what has become the preferred way for us to reach those important decisions, decisions that can affect people's long held beliefs. This process is through conversation, prayer and discussion all held in an atmosphere of mutual respect. This is not an easy process and neither can it be a rushed process.

The response of the Faith and Order Board of the General Synod of the Scottish Episcopal Church to the 2011 consultation recognised the current doctrine of the Church, as expressed in its canons, that marriage is "a physical, spiritual and mystical union of one man and one woman....". (A copy of the full text of the Canon is set out in the Appendix to this submission.) Similarly, it explained that the Church could not register civil partnerships without the prior authorisation of an appropriate form of liturgy for that purpose. We also explained that the Church has a process for altering its canons, through a consultative and legislative process.

As mentioned above, within the Scottish Episcopal Church, there are those who would wish to hold to the current canonical position. Equally, there are those who would seek to encourage change. The College of Bishops announced its intention towards the end of 2012 to "encourage a measured process of discussion and reflection within the Church on matters of same-sex relationships, having regard to the Church's context in Scotland and as a member of the Anglican Communion". (A copy of the full text of the Bishops' statement is set out in the Appendix to this submission.) The Church will therefore seek to enable all voices to be heard before coming to a decision on whether change should be proposed.

We are therefore encouraged by the intention of the Government to endeavour to ensure a balanced approach and by its commitment to providing protections for those who may have concerns about the proposed changes. We recognise the Scottish Government's authority to make laws relating to marriage and we recognise our need to discuss such changes fully. The Government's proposal to allow each denomination to opt in if its internal discussion leads to

willingness to celebrate same sex marriage gives us the space for our processes, while not delaying those institutions which have already made their decisions.

We acknowledge that the Scottish Government has taken note of the comments made in the initial consultation and we welcome the intention to provide safeguards. We emphasise the importance of ensuring the adequacy of such safeguards. It has been left to the Church to make a decision as to whether to opt in or out. That decision will be made by the Church following our internal conversations. We consider that that discussion should be about the Christian principles underlying human relationships and the nature and place of marriage in those relationships.

## **Responses to Specific Questions posed in the Consultation**

### **Question 1: Do you have any comments on the impact assessments prepared in relation to the proposed legislation?**

The impact assessments do not appear to take account of possible effects on the churches. Additional administrative cost is likely to be involved by the procedures envisaged by section 19 of the draft Bill. For a denomination which chooses to nominate individuals as celebrants for the purposes of conducting civil partnerships, an appropriate internal register will be required to be maintained under the provisions of the proposed section 94D of the Civil Partnership Act 2004 and churches will be required to notify deaths, changes of name, address or designation of approved celebrants and of the cessation of an approved celebrant for exercising approved celebrant functions.

There are also potentially unquantifiable costs associated with the possibility of claims of legal action being taken against celebrants or denominations challenging the effectiveness of the safeguards offered under the legislation.

In addition, the Consultation Paper suggests that there will be additional training and related costs for Churches associated with the tests applicable to religious bodies to be introduced under Regulation for their celebrants to be authorised to conduct marriage ceremonies – see our response to Question 5 below.

### **Question 5: 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?**

We are concerned that the tests applicable to religious and belief bodies other than the Church of Scotland should not impose requirements beyond the current position. We would hope that there would be appropriate consultation on the specific details of tests to be laid down in regulations before any regulations are adopted. In particular, whilst marriages are not conducted for profit or gain, it is not unusual for those participating in a marriage to make a donation to the funds of the church where the marriage is held. We would not wish legislative provisions to place any question over the acceptability and legality of such procedures.

Also, the risk of forced marriage or sham marriage may be greater in some contexts than in others. The Scottish Episcopal Church has in fact already issued guidance to its clergy regarding sham marriage but we would be concerned if significant training obligations were to be imposed on denominations regarding such matters over and above the issue of guidance.

Generally, we would welcome more detail on the kind of evidence which would require to be demonstrated for the purpose of meeting proposed tests. For example, what kind of evidence would be required to show a "track record" in carrying out ceremonies?

**Question 7: Do you have any comments on the proposals for authorising religious and belief celebrants who wish to solemnise same sex marriage?**

As mentioned above, we welcome the provisions enabling religious bodies to opt in either in whole or in part. We agree that alterations to the Equality Act will be required and seek an assurance that the relevant provisions of the Scottish legislation would not be brought into force before amendments to the Equality Act take effect.

However, we do not consider that the proposals enunciated in paragraphs 14 and 15 of Annex A to the Consultation Paper are practical. Those religious bodies which operate with centralised decision-making bodies have their own internal procedures for arriving at decisions. Such processes would rarely be workable if they required unanimity in all instances. Indeed the membership of decision-making bodies such as synods and assemblies may not in fact include all celebrants of the denomination in question. Any decision to opt in would need to be taken on the basis of the relevant religious body itself arriving at its decision in accordance with its own processes. Similarly, the suggestion that if, having arrived at a decision to opt in, the body in question could be removed by the Government from the prescribed list simply because one celebrant might have a change of mind or because new celebrants are appointed who happen to disagree with a decision previously arrived at by their religious body would not be workable in practice.

The alternative process explained in paragraph 16 of Annex A seems reasonable but we note the wide discretion reserved to the Registrar General that "if there is any doubt" as to a decision taken by a religious or belief body to authorise celebrants then the Registrar General could withdraw authorisation. It would be important to establish at the outset what kind of evidence the Registrar General would expect so as to avoid the possibility of doubt being cast at a later stage on the validity of prior authorisations or indeed of marriages solemnised under such authorisations.

**Question 9: Do you have any comments on the proposed approach in relation to freedom of speech?**

We are pleased to see within Annex B that the issues of freedom of speech have been addressed and welcome the intention to provide safeguards. We emphasise the importance of ensuring the adequacy of such safeguards.

**Question 10: Do you have any comments on the proposals in relation to education and same sex marriage?**

We note the provisions regarding education in Annex C which is particularly relevant to the Scottish Episcopal Church which has a small number of Denominational Schools. We believe that ensuring that these issues can simply flow through the school curriculum without the disruption of segregation will create an atmosphere of tolerance rather than division.

**Question 13: Do you have any comments on the proposed approach to the law on adultery?**

Whilst recognising the difficulties associated with arriving at a new definition of adultery, we consider that the underlying principle is that adultery constitutes a breach of the marriage vow and that if the definition of marriage is changed to include same sex relationships it would be inconsistent not to develop a definition of adultery applicable to a breach of the marriage vow arising from sexual activity between members of the same sex.

**Question 16: 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?**

The comments made above in relation to Question 7 equally apply.

Faith and Order Board  
General Synod of the Scottish Episcopal Church

18 March 2013

## APPENDIX

### Full Text of Canon 31

1. The Doctrine of this 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 is a holy and lifelong estate instituted of God.
2. No cleric of this Church shall solemnise Matrimony except in accordance with the civil law of Scotland for the time being in force in relation to civil marriages and unless satisfied that compliance has been made with such preliminaries as are therein required for the Solemnising of Religious Marriages.
3. No cleric shall perform the Marriage Service, nor permit it to be performed in Church, for parties who are within the forbidden degrees, as specified in Appendix No.26. No cleric shall perform the Marriage Service, nor permit it to be performed in Church for parties, for one or both of whom a decree of Nullity of Marriage Ab Initio has been pronounced by a Civil Court, nor for parties, either of whom has had a previous marriage dissolved quoad civilia in a Civil Court, so long as the other spouse in the marriage so dissolved remains alive, unless that cleric shall have been given a Certificate of Authorisation on the grounds that there is no ecclesiastical impediment to the marriage in terms of Section 4.
4. In cases where a decree of Nullity of Marriage Ab Initio has been pronounced by a Civil Court, or in any case where either or both parties to a proposed marriage has, or have had, a previous marriage dissolved quoad civilia in a Civil Court, but the other spouse to that marriage remains alive, any cleric to whom an approach is made by or on behalf of either party with a view to the solemnising of such proposed marriage shall refer the matter to the Diocesan Bishop. Upon receiving such reference, the Diocesan Bishop shall make such enquiries into the circumstances of the case, and take such pastoral and legal advice, as shall seem appropriate, and thereafter may issue, or decline to issue, to an officiating cleric, a Certificate of Authorisation in terms of Appendix No.27 authorising and approving that cleric's officiating at the Solemnisation of Holy Matrimony of the parties concerned according to the Rites and Ceremonies and Canons of the Scottish Episcopal Church. No Bishop shall entertain an application which has already been before another Diocesan Bishop of the Scottish Episcopal Church without the agreement of the Bishop of that other Diocese and the Episcopal Synod.
5. A cleric may use the form of Benediction provided in the Scottish Book of Common Prayer (1929) to meet the case of those who ask for the benediction of the Church after an irregular marriage has been contracted or after a civil marriage has been legally entered into, provided only that the cleric be satisfied that the marriage is not contrary to Sections 3 and 4 of this Canon.
6. The solemnisation of Marriage shall take place in Church except with the written sanction of the Bishop.

## **Statement from the College Of Bishops, Regarding Process for Discussion of Same Sex Relationships (December 2012)**

The College of Bishops at its last meeting discussed a number of issues around the subject of same sex relationships. It was aware that the Faith and Order Board would in due course be responding to the Scottish Government Bill on same sex marriage. Developments in the area of same sex relationships are ones which the Church needs to discuss in its own way and in its own time. A linked question is how the SEC sees itself in relation to the Anglican Communion following the decision of General Synod in June this year not to adopt the Anglican Covenant. The tone of debate at General Synod evinced continuing warmth towards the Anglican Communion and it is clear that the existing companionship links between Scottish dioceses and others in the Communion are highly valued. The Continuing Indaba project within the Communion comprises a resource which could be drawn on to enable discussion across difference.

The College of Bishops intends to invite the Mission and Ministry Board, to consider designing a process to enable consideration of matters concerning same sex relationships. Such matters are complex ones for the Church to consider since they give rise to a range of strongly held views. Such a process would enable conversation and discussion to take place across a range of places and people in an atmosphere where time can be taken for careful consideration of the matters in question. The Bishops envisage that such a process itself is likely to take some time. At this point in our life, it would represent a broadening of the concept of the Provincial Conference. It is hoped that in designing such a process, it may be possible to draw on Anglican Communion resources and perhaps involve one or more of our companion dioceses as a means of including a Communion aspect to our discussions.