

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

SUBMISSION FROM SCOTTISH COUNCIL OF JEWISH COMMUNITIES

Please note that this response has been prepared in consultation with all branches of Judaism represented in Scotland, and reflects all of their differing views. The majority of the Jewish community in Scotland is affiliated to Orthodox Judaism, which has four synagogues in Glasgow, and one in each of Edinburgh, Dundee, and Aberdeen. In addition there is a Liberal Jewish community in Edinburgh, and a Reform synagogue in Glasgow.

4. How would you characterise your views on the Bill in general?

In view of the widely differing opinions in the Jewish community, we welcome the fact that, if passed, the Bill will enable those faith communities that wish to solemnise same sex marriage and register civil partnerships to do so, while imposing no obligations on those faith communities that do not so wish.

5. How would you characterise your views on the introduction of same sex marriage, so that same sex couples can marry each other?

There is a wide range of opinion among individual Jewish people about same sex marriage and the registration of civil partnerships through a religious ceremony. In preparing this response we have consulted widely among organisations and individuals in the Scottish Jewish community, including the Orthodox, Liberal, and Reform congregations, and Scottish Rainbow Community, a small group of LGBT Jews in Scotland. The views expressed in this response represent the official position of the various branches of the Jewish community in Scotland.

The Orthodox Jewish view is very much opposed to same sex relationships, which it regards as forbidden according to their understanding of the *Torah*, Jewish Law. However, whilst it disapproves of such relationships, and particularly of the formal recognition of such relationships, the Orthodox community respects and welcomes everyone, whatever their sexual orientation, and, while it would not, under any circumstances, carry out same sex marriages or religious civil partnership registrations, it does not wish to impose its views on others.

The Liberal Jewish community strongly supports the introduction of same sex marriage, and religious civil partnership ceremonies. However, while it would hope to register to solemnise these once the proposed legislation is enacted, it does not wish to impose its views on others.

The Assembly of Reform Rabbis, a UK-level body, has stated, in relation to same sex commitment ceremonies, that “homosexual couples should have [an] opportunity for a religious ceremony within the sanctity of Jewish community, tradition, and practice” but does not suggest that this is to be a ceremony with legal force, and does not mention religious civil partnership registration or same sex marriage. The Reform community in Scotland is currently debating this statement but has not yet reached a conclusion.

6. How would you characterise your view on putting belief celebrants on the same footing as religious celebrants?

We are content for appropriate belief communities to be able to nominate celebrants to officiate at marriage ceremonies, and register civil partnerships.

However, our preference is for the proposals set out in the draft Bill included in the previous consultation¹, namely the introduction of a third category of belief celebrants alongside religious and civil celebrants, rather than amalgamating religion and belief into a single category as in the Bill that has been introduced in the Parliament.

It is evident from the consultation paper on the draft Bill that the Scottish Government recognises that Humanist beliefs are not religious, and that it is, therefore, inappropriate to require Humanist celebrants to be registered under that head, as they are at present. This recognition was explicitly welcomed by the Humanist Society in their response² to the consultation. We believe that the converse is also true, and indeed that the term “religious or belief” does not adequately recognise the Humanist objection as it is likely to be abbreviated to “religious” in practice. We therefore urge that the difference between religious and belief communities should continue to be respected, and that the words “religious or belief body” should be replaced with “religious body or belief body”, “religious or belief marriage” should be replaced with “religious marriage or belief marriage”, and “religious or belief civil partnership” should be replaced with “religious civil partnership or belief civil partnership”.

7. How would you characterise your views on the arrangements for authorising celebrants to solemnise opposite sex and same sex marriage (including the opt-in procedures)?

1) We strongly agree with the proposal set out in the Bill for a dual opt-in system, in which religious and belief bodies have first to register to solemnise same sex marriages, and then nominate celebrants to officiate at such ceremonies as this will respect the views of those religious or belief bodies that do not wish to carry out same sex marriages or register civil partnerships. We also strongly support the proposed amendment to the Equality Act 2010 to protect those communities and ministers or celebrants who do not wish to solemnise same sex marriages.

We are, however, concerned that these arrangements should be robust enough to be effective against any possible challenge in the courts. In this respect, we are concerned to read reports that, because of concerns about the Marriage (Same Sex Couples) Act 2013, “Sikh temples [in England and Wales] have been advised to halt all civil marriage ceremonies on their premises to protect them from possible legal challenges for refusing to conduct same-sex weddings.”³

2) We have some concerns about the proposed procedure for prescribed organisations to nominate celebrants who are not “a minister, clergyman, pastor, priest, or other celebrant” of that organisation, but who are “recognised by a religious

¹ <http://www.scotland.gov.uk/Resource/0041/00410328.pdf>

² <http://www.scotland.gov.uk/Resource/0042/00426226.pdf>

³ “Religion told to halt weddings over gay rights” (The Telegraph, 21 July 2013)
<http://www.telegraph.co.uk/news/religion/10192578/Religion-told-to-halt-weddings-over-gay-rights.html>

or belief body so prescribed as entitled to solemnise marriage between persons of the same sex on its behalf.” (section 10(2)(1B)(a)(i)), (our emphasis). This removes protection from those religious bodies that do not wish to carry out same sex marriages, since it would permit their clergy to be nominated by a different branch of the same religion. (It is, for example, conceivable that a Liberal Jewish community might “recognise” an Orthodox Rabbi as entitled to solemnise same sex marriages on their behalf, even though the Orthodox Jewish community by which the Rabbi was employed, was firmly opposed to the celebration of same sex marriage.

To resolve this concern, we suggest amending section 10(2)(1B)(a) to state:

“(1B) Subject to section 23A, a marriage between persons of the same sex may be solemnised by and only by–

(a) a person who is–

(i) a minister, clergyman, pastor, priest, or other celebrant of a religious or belief body prescribed by regulations made by the Scottish Ministers; or

(ii) not being one of the foregoing, is recognised by a religious or belief body so prescribed as entitled to solemnise marriage between persons of the same sex on its behalf, and is not a celebrant of a religious or belief body that has indicated that it is opposed to solemnising marriages between persons of the same sex; or

(iii) is registered under section 9 to solemnise marriage between persons of the same sex; or

(iv) temporarily authorised under section 12 to solemnise marriage between persons of the same sex;”

3) We also have some concerns about the proposed procedure for temporary authorisation of celebrants (section 12).

i) Our experience in relation to opposite sex marriage is that in many cases when a couple request to be married by someone other than the Rabbi of the local synagogue, it is because one partner comes from outwith Scotland and they wish to be married by their own Rabbi. In such cases, National Records of Scotland (NRS) make enquires, through the Scottish Council of Jewish Communities, as to whether the person concerned is “recognised by⁴ the Jewish community (“Hebrew Congregation” in the words of the 1977 Regulations⁵) as a Rabbi authorised to officiate at Jewish weddings” The Rabbi need not necessarily be from Scotland, or even be a member of a branch of Judaism with a presence in Scotland or even in the UK, provided that his or her qualifications and bona fides are recognised by a branch of Judaism that is established the UK. Once the Rabbi’s bona fides have been confirmed, the wedding at which he or she officiates will be recognised by the relevant authorities as bringing about both a religious and a civil marriage.

⁴ Marriage (Scotland) Act 1977 section 8(1)(a)(ii) <http://www.legislation.gov.uk/ukpga/1977/15/section/8>

⁵ The Marriage (Prescription of Religious Bodies)(Scotland) Regulations 1977 No.1670 (S.121) *not available online*

We anticipate that NRS will follow much the same procedure to check the bona fides of celebrants before granting temporary authorisations to officiate at same sex marriages. However, whilst a Rabbi from outwith Scotland may well be recognised by a branch of Judaism in Scotland as authorised to officiate at same sex marriages, he or she may well not be “a member” of the relevant branch. We presume this terminology (section 12(2)(b)(1C)) is to protect those religious bodies that do not wish to carry out same sex marriages, so that their clergy may not be nominated by a different branch of the same religion (for example, to prevent an Orthodox Rabbi from being nominated by a Liberal Jewish community to officiate at a same sex marriage, even if he personally were willing to be so nominated). We welcome this protection (which, as we have already pointed out, is lacking in section 10(2)(1B)(a)(i)), but are concerned that same sex couples who may wish to be married by a Rabbi from a branch of Judaism that does carry out same sex marriages but does not have a presence in Scotland, will be prevented from having the celebrant of their choice. This is inequitable, since, as we have already explained, an opposite sex couple are able to choose a celebrant from outwith the UK.

To resolve this issue, enabling same sex couples to enjoy the wider choice of celebrants which is available to opposite sex couples, whilst maintaining full protection for those faith communities that oppose same sex marriage, and also the issue raised in ii) below, we have suggested a possible amendment to the Bill in iii) below.

ii) We are concerned that section 12(2)(b)(1C)(b) may inadvertently exclude small faith communities that would wish to celebrate same sex marriages, since it requires that the relevant religious or belief body “*has nominated members ... to solemnise marriages between persons of the same sex.*” (our emphasis). As we have already stated, the Reform Jewish community in Scotland has not yet decided whether or not it wishes to conduct same sex marriages. Were it, however, to decide to opt in to the legislation in order to conduct same sex marriages, it would not be able to nominate a regular celebrant, since it has been without a Rabbi since the last incumbent left some time ago. Since, therefore, the community would neither be prescribed under section 8(1B)(a)(i), nor would it have nominated members under section 9(1A), the current wording would prohibit *any* Reform Rabbi from being temporarily authorised to officiate at same sex marriages.

(NB. Note that the above example is hypothetical since the Reform Jewish community in Scotland has not yet reached a conclusion about same sex marriage, but we expect that these circumstances will also apply to a number of other small but well-established religious communities.)

To resolve this issue, and also that raised in i) above, we have suggested a possible amendment to the Bill in iii) below.

iii) To resolve both of the above concerns, we suggest amending section 12(2)(b)(1C) to state:

“The Registrar General may grant an authorisation to a person under subsection (1)(b) to solemnise marriages between persons of the same sex only if the person is recognised as entitled to solemnise marriages between persons of the same sex on its behalf by a religious or belief body—

(a)(i) that is prescribed by virtue of section 8(1B)(a)(i); or

- (ii) not being prescribed by virtue of section 8(1B)(a)(i), may nominate to the Registrar General any of its members whom it desires should be registered as empowered to solemnise marriages between persons of the same sex on its behalf;

and

- (b) the person is not a celebrant of a religious or belief body that has indicated that it is opposed to solemnising marriages between persons of the same sex.”

8. How would you characterise your views on civil partnerships changing to marriage?

We are content with the proposals in the Bill.

9. How would you characterise your views on allowing civil marriage ceremonies to take place anywhere, other than religious premises, agreed between the couple and the registrar?

We are content with the proposals in the Bill.

10. How would you characterise your views on allowing the religious and belief registration of civil partnerships?

1) We strongly agree with the proposal set out in the Bill for a dual opt-in system, in which religious and belief bodies have first to register to register civil partnerships, and then nominate people to register such ceremonies. We also strongly support the proposed amendment to the Equality Act 2010 to protect those communities and individuals who do not wish to register civil partnerships.

2) We have some concerns about the proposed procedure for authorising people to register civil partnerships (section 22(13)94A).

The wording of section 22(13)94A(1)(a)(i) fails to protect those religious and belief bodies that do not wish to register civil partnerships, since it would permit any person “*who, not being a celebrant, is recognised by a [prescribed] religious or belief body ... to register civil partnerships on its behalf.*” (our emphasis). This would, for example, permit the Registrar General to register an Orthodox Rabbi against the wishes of the Orthodox Jewish community, on the grounds that he was “recognised by” the Liberal Jewish community to register civil partnerships on its behalf.

We therefore suggest amending section 22(13)94A(1)(a) to state:

“(1) A civil partnership may be registered by and only by–

(a) a person who is –

- (i) a celebrant of a religious or belief body prescribed by regulations made by the Scottish Ministers; or

(ii) not being a celebrant, is recognised by a religious or belief body so prescribed as entitled to register civil partnerships on its behalf, and is not a celebrant of a religious or belief body that has indicated that it is opposed to registering civil partnerships; or

(iii) is registered under section 94B, or

(iv) temporarily authorised under section 94E,”

3) We also have some concerns about the proposed procedure for temporary authorisation to register civil partnerships (section 22(13)94E).

i) As we have stated in relation to section 12 (see question 7), we would anticipate that many requests for temporary authorisation will be because one partner to a civil partnership comes from outwith Scotland, and they wish their civil partnership to be registered by a celebrant or other person from their own religious or belief community. In such cases, whilst the person concerned may be recognised by the relevant religious or belief body as authorised to register civil partnerships, he or she may not be “a member” of that religious or belief body. We presume this terminology (section 22(13)94E(3)) is to protect those religious bodies that do not wish to register civil partnerships, so that their clergy and other functionaries may not be nominated by a different branch of the same religion (for example, to prevent an Orthodox Rabbi from being nominated by a Liberal Jewish community to register a civil partnership, even if he personally were willing to be so nominated). We welcome this protection, (which, as we have already pointed out, is lacking in section 22(13)94A(1)(a)(i)), but are concerned that couples who may wish their civil partnership to be registered by someone from a branch of Judaism that does register civil partnerships but does not have a presence in Scotland will be prevented from having the registrar of their choice.

To resolve this issue, enabling same sex couples to enjoy a wider choice of registrar, whilst maintaining full protection for those faith communities that oppose civil partnership, and also the issue raised in ii) below, we have suggested a possible amendment to the Bill in iii) below.

ii) We are concerned that section 22(13)94E(3)(b) may inadvertently exclude small faith communities that would wish to register civil partnerships, since it requires that the relevant religious or belief body “*has nominated members ...under section 94B(1)*” (our emphasis). As we have stated in relation to section 12(2)(b)(1C)(b) (see question 7) this would prevent members of small but well-established religious communities that have opted in to register civil partnerships, but have not been able to nominate a person to act as registrar, from being temporarily authorised to register civil partnerships.

To resolve this issue, and also that raised in i) above, we have suggested a possible amendment to the Bill in iii) below.

iii) We therefore suggest amending section 22(13)94E(3) to state:

“The Registrar General may grant an authorisation to a person under subsection (1)(b) only if the person is recognised as entitled to register civil partnerships on its behalf by a religious or belief body—

(a)(i) that is prescribed by virtue of section 94A(1)(a)(i); or

(ii) not being prescribed by virtue of section 94A(1)(a)(i), may nominate to the Registrar General any of its members who it desires should be registered as empowered to register civil partnerships.

and

(b) the person is not a celebrant or other functionary of a religious or belief body that has indicated that it is opposed to registering civil partnerships”

11. How would you characterise your view on allowing transgender persons to stay married when obtaining a full Gender Recognition Certificate, which provides legal recognition in the acquired gender?

We are content with the proposals in the Bill.

12. Would you like to comment on the wider issue of protections for those in society who may have concerns about same sex marriage?

1) We welcome the reassurance provided by sections 10(2)(b)(1D) and 13(3) of the Bill, and in section 93 of the Policy Memorandum, but, in view of recent judgments, remain concerned that these may not be fully effective.

As stated above, we strongly support the proposed amendments to the Equality Act 2010. We agree that protection should not only be afforded to celebrants, but should cover anyone employed by or acting on behalf of a religious or belief body that has indicated that it is opposed to solemnising same sex marriages or registering civil partnerships, or for an organisation that is associated with such a body. In the Jewish community, this is likely to include, amongst others, people responsible for decisions about the use of communal buildings and other facilities, *kashrut* supervisors⁶, *mikveh*⁷ supervisors, choirs, and other musicians.

It should be noted that the religious component of a Jewish marriage is not confined to the short ceremony under the marriage canopy, but includes the celebratory meal thereafter, and for the subsequent seven days, at which part of the ceremony is repeated.

We also have concerns about people with deep-held and sincere religious beliefs who do not work for religious or belief bodies. Whilst it is important that people throughout Scotland should have no difficulty in availing themselves of the new legislation, we believe it is unreasonable to introduce a new contractual requirement for existing employees that may require some to choose between their job and their conscience. We therefore recommend that existing employees of companies providing services in relation to same sex marriage and civil partnership ceremonies should be able lawfully to refuse to participate in work relating to such ceremonies, provided that there is another employee in the area who is willing to undertake the

⁶ In order to ensure that food is kosher, i.e. that it complies with Jewish dietary laws, a supervisor, employed by a religious organisation that certifies compliance, is normally required to be in attendance throughout the time that food is being prepared and served.

⁷ The *mikveh* is a ritual bath used, amongst others, by brides on the eve of their wedding.

work, but that employees who take up employment after the commencement of the Act, and who will, therefore, have known of the requirement to provide these services before applying for the job, should not be able to do so.

2) We are also concerned at a lack of even-handedness, for example in the Crown Office press release announcing new guidelines for prosecutors in relation to same sex marriage⁸. The headline states “*Lord Advocate issues ‘same sex’ marriage opposition guidance to prosecutors*”, and the press release continues “*Prosecutors in Scotland have today been issued with guidance by the Lord Advocate, Frank Mulholland QC, on the prosecution of anyone who opposes same sex marriage in Scotland.*” (our emphasis).

We fully support the guidelines themselves, which state that “*COPFS will consider any incident reported to it involving criticism of or support for same sex marriage on its facts and circumstances. Views expressed or comments made in relation to same sex marriage in ways which do not incite hatred or violence towards a particular person or group of people and which do not cause or intend to cause public disorder will not be the subject of criminal prosecution.*” The press release is, however, likely to be more widely read than the guidelines, and we are concerned that its apparent implication that simply opposing same sex marriage might be a criminal offence could cause distress and anger.

13. Would you like to comment on the wider issue of freedom of speech?

We welcome the Scottish Government’s commitment to uphold Convention rights to freedom of thought, conscience, religion, and expression (section 14), but, in view of recent judgments, remain concerned that this may be difficult to implement.

14. Would you like to comment on any other wider issues in relation to the Bill that are not mentioned above?

Separate Registers

It is not clear to us whether the Registrar General will keep a single register or separate registers of those people authorised to celebrate same sex marriage and register civil partnership. Since some celebrants may wish to carry out only one type of ceremony, we recommend that separate registers should be kept.

Secondary legislation

1) We do not think it appropriate that the Regulations referred to in sections 10(2)(b)(1G), 11(2)(e)(2C), and 12(2)(b)(1F) should be subject to negative procedure, and urge both that the affirmative procedure should be used, and that, in order to ensure proper scrutiny and the opportunity for all interested parties to comment, these Regulations should be subject to a full public consultation.

2) We are concerned about some of the proposed qualifying requirements for religious and belief bodies (Policy Memorandum sections 65-74).

⁸ <http://www.crownoffice.gov.uk/media-site/media-releases/428-lord-advocate-issues-same-sex-marriage-opposition-guidance-to-prosecutors>

While we completely agree that “*All marriages and civil partnerships in Scotland ought to be conducted in a dignified and solemn manner*”, we are concerned that some of the proposed tests are too restrictive and onerous, particularly for small faith communities and congregations.

The Jewish community as a whole, and, in particular, the three strands of Judaism currently represented in Scotland, have a long record of carrying out religious ceremonies, including religious marriages that are also recognised as civil marriages, and their Rabbis always take time to discuss the ceremony and its implications with the family in advance.

It is, however, conceivable, that other branches of mainstream Judaism may wish to establish a congregation in Scotland in the future, but, as new institutions, these would, *ex hypothesi*, not have any track record in Scotland. We therefore urge that decisions about the repute of any faith community or branch thereof, will be considered on the basis of their activities outwith as well as within Scotland, and always in discussion with authoritative representatives of the relevant faith community.

We are also concerned at the proposal that “*The body and its celebrants would not be allowed to solemnise marriages or register civil partnerships for profit or gain.*” It is standard practice for synagogues to charge a fee for the use of their premises for marriage ceremonies – as do hotels and other marriage premises – and also for the officiating Rabbi to charge a professional fee. Naturally these should not be (and are not) unduly onerous, but to forbid such fees entirely would be unreasonable.

Whilst we unreservedly condemn forced and sham marriages, we believe that requiring all celebrants to undergo formal training in these areas would be unduly onerous on those faith communities for which these are not an issue. The Jewish community is too small to support a rabbinical college in Scotland. All Rabbis working in Scotland will, therefore, have trained either in England or elsewhere, but the Scottish Jewish community does not have any means by which to influence the curriculum in those institutions, and the cost implications of sourcing and funding additional training for those Rabbis who obtain employment in Scotland, would be likely to be prohibitive, as would the establishment of an inspectorate to ensure effective compliance.

Note: The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland. SCoJeC advances public understanding about the Jewish religion, culture and community, by providing information and assistance to educational, health, and welfare organisations, representing the Jewish community in Scotland to Government and other statutory and official bodies, and liaising with Ministers, MSPs, Churches, Trades Unions, and others on matters affecting the Jewish community. SCoJeC also provides a support network for the smaller communities and individuals and families who live outwith any Jewish community, and assists organisations within the Scottish Jewish community to comply with various regulatory requirements. SCoJeC also promotes dialogue and understanding between the Jewish community and other communities in Scotland, and works in partnership with other organisations and stakeholders to promote equality, good relations, and understanding among community groups. (Scottish Charitable Incorporated Organisation SC029438)

In preparing this response we have consulted widely among members of the Scottish Jewish community.

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