

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

SUBMISSION FROM THE SCOTTISH EPISCOPAL CHURCH (FAITH AND ORDER BOARD OF THE GENERAL SYNOD)

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

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 and also to the Consultation Bill in March 2013 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" and there was some discussion of this at the Church's General Synod meeting in June 2013. (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.

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

See response to question 4 above.

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

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)?

We welcome the provisions enabling religious bodies to opt in, either in whole or in part, by the provisions in the Bill which would allow either prescription under section 10 of the Bill (amending section 8 of the 1977 Act) or registration of nominated persons under section 11 of the Bill (amending section 9 of the 1977 Act).

However, we remain cautious regarding the “qualifying requirements” which may be imposed as a precondition of prescription or registration for the purposes of nomination. We are pleased to note the commitment contained in section 69 of the Policy Memorandum that appropriate consultation will be carried out by the Scottish Government before any regulations are brought into effect.

As mentioned in our response to the Consultation Bill in March 2013, we are of the view that the tests applicable to religious and belief bodies should not impose requirements beyond the current position. If, however, additional requirements are to be introduced, careful thought will need to be given both as to their nature and as to the evidence required to be given to Scottish Ministers as a condition of prescription. For example, within the Scottish Episcopal Church, there is a regular flow of clergy from other Anglican provinces, such as the Church of England and other Anglican churches in other parts of the world. Under existing arrangements, such clergy are automatically authorised to solemnise marriages. It would be unhelpful, were the Scottish Episcopal Church to be prescribed under the revised section 8 of the 1977 Act in effect have to operate two tiers of clergy – those authorised to conduct solemnise marriage and those who, coming to the Scottish Episcopal Church from overseas, might find themselves unable to do so pending their satisfying some form of additional training condition.

Section 68 of the Policy Memorandum makes reference to the type of requirements which had been referred to in the earlier consultation document. As we indicated in

our response to the Consultation Bill, if such requirements were to be introduced, it would be helpful to have clarity on matters such as:-

- references to “profit or gain” – whilst marriages are not solemnised 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.
- what kind of evidence would be required to show a "track record" in carrying out ceremonies?
- in relation to forced marriage or sham marriage, the Scottish Episcopal Church has already issued guidance to its clergy regarding sham marriage and we would be concerned if significant training obligations were to be imposed on denominations regarding such matters over and above the issue of guidance.

In our response to the Consultation Bill we commented on the proposals enunciated in paragraphs 14 and 15 of Annex A to the December 2012 Consultation Paper and indicate that we viewed them as impractical. Such matters were they to be pursued would doubtless form part of the Regulations setting out the qualifying requirements for prescription, rather than being dealt with on the face of the Bill, but we would re-iterate that 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, any 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.

We welcome the additional protections mentioned at Section 93 of the Policy Memorandum in relation to the proposed alterations to the Equality Act over and above those envisaged at the time of the Consultation Bill.

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

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 registrar?

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

See response to questions 4 and 7 above.

11. How would you characterise your views on allowing transgender persons to stay married when obtaining a full Gender Recognition Certificate, which

provides legal recognition in the acquired gender?

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

We note the content of section 124 of the Policy Memorandum which is 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.

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

We note the provisions of section 14 of the Bill and are pleased to see that the issues of freedom of speech have been addressed. We emphasise the importance of ensuring the adequacy of such safeguards.

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

In our response to the Consultation Bill in March 2013 we indicated that whilst we recognised the difficulties associated with arriving at a new definition of adultery, we considered 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. We appreciate the consideration given by the Government and the explanation set out in sections 136-143 of the Policy Memorandum and understand why the Government has chosen not to alter the definition of adultery.

Scottish Episcopal Church (Faith and Order Board of the General Synod)
23 August 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.