

Consultations

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Registration of civil partnership | Same sex marriage: a consultation

Introduction

Scottish Government consultation on the registration of civil partnership, same sex marriage, and related issues.

Respondent Information Form

Please complete the details on the Respondent Information Form below. This will help ensure we handle your response appropriately.

Name: * Required

Organisation: (if applicable)

Postal Address:

Required

Post Code: * Required

E-mail:

Telephone Number:

1. Are you reponding as: (please tick one box) * Required

An individual (go to Q2a/b and then Q4)
 on behalf of a group or organisation (go to Q3 and then Q4)

2a. INDIVIDUALS

Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government website)?

Yes (go to 2b below)
 No, not at all (We will treat your response as confidential)

2b. Where confidentiality is not requested, we will make your response available to the public

Yes, make my response, name and address all available
 Yes, make my response available, but not my name or address
 Yes, make my response and name available, but not my address

on the following basis
(please tick **one** of the
following boxes)

3. ON BEHALF OF GROUPS OR ORGANISATIONS

The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your **response** to be made available?

Yes
 No we will treat your response as confidential

4. SHARING RESPONSES/FUTURE ENGAGEMENT

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes
 No

The registration of civil partnerships

QUESTION 1 (Paragraphs 2.12 and 2.13)

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

- Yes
 No
 Don't Know

Please give reasons for your answer.

Civil Partnership is a distinct legal status which is expressly not marriage. It was created by the State to allow a couple to register their relationship and acquire certain legal rights and responsibilities in respect of each other and one another's rights in property. The nature, formation and registration of Civil Partnerships has to date been entirely secular. It is not appropriate for such an administrative function of the State to be carried out by select faith groups in place of official functionaries.

QUESTION 2 (Paragraphs 2.14 to 2.19)

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

- Yes
 No
 Don't Know

If you have answered no, please explain what elements of the proposals in England and Wales you consider inappropriate for Scotland.

The position of Church and State in England is entirely different to that of Scotland. In England there is an established Church which plays a part in the functions of the State and the State plays a role in the governance of the Church.
In Scotland there is no established Church, the Kirk having asserted and maintained its independence from the State, a position made clear in statute (Church of Scotland Act 1921).

QUESTION 3 (Paragraphs 2.20 to 2.24)

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

- Yes
 No
 Don't Know

Please give reasons for your answer.

The nature, formation and registration of Civil Partnerships are that of a secular function of the State and should remain so.

QUESTION 4 (Paragraphs 2.20 to 2.24)

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

- Yes
 No
 Don't Know

Please give reasons for your answer.

The nature, formation and registration of Civil Partnerships are that of a secular function of the State and should remain so.

QUESTION 5 (Paragraph 2.25)

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

- Yes
 No
 Don't Know

Please give reasons for your answer.

It would be an improper and unwarranted interference with both the right to freedom of conscience and right to freedom of assembly for the State to seek to prescribe to a religious body the tenets and observance of its faith.

QUESTION 6 (Paragraphs 2.26 and 2.27)

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

- Yes
 No
 Don't Know

Please give reasons for your answer.

Religious celebrants should not be empowered to conduct civil partnerships at all. Nevertheless, assuming they were to be generally empowered to register civil partnerships: it would be logically, legally and administratively incoherent for a religious celebrant to be allowed to register civil partnerships if their religious body objects to registration and if the authority to officiate such functions is conferred upon the celebrant by virtue of their position within their religious body (as is the position in relation to marriage and of celebrants of certain religious bodies).

QUESTION 7 (Paragraphs 2.28 to 2.30)

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

- Yes
 No
 Don't Know

Please give reasons for your answer.

It would be an improper interference with the right to freedom of conscience for the State to seek to prescribe to a religious celebrant the observance of their faith.

QUESTION 8 (Paragraphs 2.31 to 2.35)

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

- Option 1
 Option 2
 Neither

If you have another option, please describe it.

The formation and registration of Civil Partnerships are a secular function of the State and should remain so.

QUESTION 9 (Paragraphs 2.36 to 2.40)

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?

- Yes
 No
 Don't Know

Please give reasons for your answer.

Current law allows religious celebrants to conduct marriages. Nothing in that body of law gives rise to any legal right for parties to be married by a particular celebrant, within a particular religious body or on its premises. It is clear therefore that, unless such was to be expressly provided in statute, there is no ground upon which such a right would arise in respect of civil partnerships.

Same sex marriage**QUESTION 10 (Paragraphs 3.11 and 3.12)**

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

- Yes
 No
 Don't Know

Please give reasons for your answer.

Marriage law has developed significantly over the centuries, reflecting social change in the construction of and attitudes to adult relationships. Nevertheless, a central purpose of marriage law has remained constant: to recognise, regulate and facilitate the stable intimate personal relationship of a consenting couple. It is our strong view that the sex, gender and sexual orientation of the parties are not valid grounds for discrimination.

QUESTION 11 (Paragraph 3.13)

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

- Yes
 No
 Don't Know

Please give reasons for your answer.

What and how relationships are recognised or solemnised within a faith are matters for persons of that faith alone. It would be an improper and unwarranted interference with both the right to freedom of conscience and right to freedom of assembly for the State to seek to prescribe to a religious body the tenets and observance of its faith.

QUESTION 12 (Paragraphs 3.14 to 3.18)

Do you agree with the introduction of same-sex **civil** marriage only?

- Yes
 No
 Don't Know

Please give reasons for your answer.

It would be preferable for functions of the State to be separate from those of religious bodies. Nevertheless, the principle of equality before the law demands that if religious bodies and celebrants are accorded the authority to officiate over marriages of freely consenting parties with capacity to marry in law, then that should not be further limited other than according to the tenets of the faith in question.

QUESTION 13 (Paragraph 3.19)

Do you agree with the introduction of same-sex marriage, **both** religious and civil?

- Yes
 No
 Don't Know

Please give reasons for your answer.

It would be preferable for functions of the State to be separate from those of religious bodies. Nevertheless, the principle of equality before the law demands that if religious bodies and celebrants are accorded the authority to officiate over marriages of freely consenting parties with capacity to marry in law, then that should not be further limited other than according to the tenets of the faith in question.

QUESTION 14 (Paragraphs 3.23 and 3.24)

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

- Yes
 No
 Don't Know

Please give reasons for your answer.

What and how relationships are recognised or solemnised within a faith are matters for persons of that faith alone. It would be an improper and unwarranted interference with both the right to freedom of conscience and right to freedom of assembly for the State to seek to prescribe to a religious body the tenets and observance of its faith.

QUESTION 15 (Paragraphs 3.25 and 3.26)

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

- Yes
 No
 Don't Know

Please give reasons for your answer.

It would be logically, legally and administratively incoherent for a religious celebrant to be allowed to solemnise any marriage to which their religious body objects to registration if the authority to officiate such functions is conferred upon the celebrant by virtue of their position within their religious body.

QUESTION 16 (Paragraphs 3.27 and 3.28)

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

- Yes
 No
 Don't Know

Please give reasons for your answer.

It would be an improper interference with the right to freedom of conscience for the State to seek to prescribe to a religious celebrant the observance of their faith, including which relationships that faith should or should not recognise or celebrate.

QUESTION 17 (Paragraphs 3.29 to 3.33)

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?

- Option 1
 Option 2
 Neither
 Don't Know

Please give reasons for your answer and if you have another option, please describe it.

Providing that a celebrant is not obliged in any way by law to solemnise any marriage which may be contrary to their faith adds nothing new to the law, but does expressly state the correct position. Opening the current provisions on marriage to include parties of the same-sex is in our opinion the option which best provides clear equality before the law.

QUESTION 18 (Paragraphs 3.34 to 3.39)

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 religious premises cannot be used against the wishes of the relevant religious body?

- Yes
 No
 Don't Know

Please give reasons for your answer.

There are no grounds upon which the proposal to open marriage to same-sex couples would in any way alter the legal rights of a religious body to own property and enjoy, administer and utilise that property only as is in keeping with its credo.

QUESTION 19 (Paragraph 3.41)

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

- Yes
 No
 Don't Know

Please give reasons for your answer.

First, withdrawing Civil Partnership (CP) would imply that same-sex marriage is a replacement for CP, despite the fact that CP was introduced as a separate and distinct form of relationship status.
Second, removal of CP would probably make it necessary to introduce a further procedure by which existing CPs were able to be converted into marriages.
Third, removing CP could conceivably create unnecessary difficulties in respect of CPs registered in other UK jurisdictions.
Fourth, removing CP could lead to private and public bodies incurring needless 'menu costs' if it became necessary to amend documentation to

QUESTION 20 (Paragraph 4.19)

Do you have any other comments?

- Yes
 No

We are particularly interested in your views on:

- potential implications of the proposals for transgender people (paragraph 3.42);
- possible transitional arrangements (paragraphs 3.43 and 3.44);
- recognition of Scottish same sex marriages elsewhere (paragraphs 3.45 to 3.49);
- any comments on forced marriage (paragraphs 3.51 and 3.52);
- any comments on sham marriage (paragraph 3.53);
- potential financial implications (paragraphs 4.01 to 4.08);
- potential equality implications (paragraphs 4.09 to 4.14).

Civil Partnership should be open to parties of the opposite sex.

It would be preferable if religious bodies and celebrants did not play a part in the administrative functions of the State. While they would always remain free to bless or sanctify whichever relationships they so chose, such ceremonies should not have a legal significance. The formation of marriage and registration of civil partnership should be an entirely civil matter.

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