

Corporate Policy and Strategy Committee

10.00am Tuesday 26 February 2013

Consultation on the Marriage and Civil Partnership (Scotland) Bill

Item number	7.4
Report number	
Wards	City-wide

Links

Coalition pledges	n/a
Council outcomes	CO10
Single Outcome Agreement	SO2 and SO4

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Executive summary

Consultation on the Marriage and Civil Partnership (Scotland) Bill

Summary

The City of Edinburgh Council together with other interested parties has been invited to give views on the detail of the legislation and associated guidance which will:

- introduce same sex marriage
- allow civil partnerships to be registered through religious or belief ceremonies
- remove the requirement for civil ceremonies to take place in “approved premises”
- establish a third category of marriage ceremony known as “belief ceremonies”
- make general changes to the marriage law

Recommendations

It is recommended that the Policy and Strategy Committee:

- a) notes the Scottish Government’s proposals for the introduction of same sex marriage and religious and belief registration of civil partnership;
- b) notes that it is open to each political party to submit its own views to Government on the proposed legislation;
- c) notes that the Government is inviting the Council’s views on the detail of the legislation and associated guidance and agrees to submit comments on the proposed legislation;
- d) approves the responses to the consultation questions presented in Appendix 1;
- e) notes the impact that the proposals may have on the Council’s Registration Service.

Measures of success

- The proposals will allow couples to enter into a same sex marriage and allow same sex civil partnerships to be registered through religious or belief ceremonies.

Financial impact

- The proposals may result in reduced income to the Council from:
 - Reduction in the number of civil ceremonies conducted by Registrars
 - Reduction in non-statutory accommodation fees, as same sex couples may choose to have their ceremony in a church
 - Loss of income as a result of no longer being required to approve premises for civil ceremonies (estimated income reduction of £14K per annum)
- There may be an increase in income if couples who had previously entered a civil partnership choose to go through a civil marriage ceremony.

Equalities impact

- The proposals have been prepared by the Scottish Government and the consultation document includes a full Equality Impact assessment.

Sustainability impact

- These proposals do not have any impact on sustainability for the Council.

Consultation and engagement

- The Scottish Government is seeking the views on the detail of the legislation and has presented specific questions in the consultation document, see Appendix 1.

Background reading / external references

- The Marriage and Civil Partnership (Scotland) Bill – A Consultation www.scotland.gov.uk/Publications/2012/12/9433.

Consultation on the Marriage and Civil Partnership (Scotland) Bill

1. Background

- 1.1 The Scottish Government has launched a consultation on the Marriage and Civil Partnership (Scotland) Bill. The consultation commenced on 12 December 2012 and the closing date for comments is 20 March 2013.
- 1.2 The consultation seeks views on the detail of the legislation. It covers the introduction of same sex marriage and protections in relation to religious bodies and celebrants, freedom of speech and education.

2. Main report

- 2.1 Currently, marriage is only open to opposite sex couples and civil partnership only open to same sex couples. Civil partnerships can only be registered by a civil Registrar, and cannot take place in religious premises. It is possible to have a religious, belief or other blessing afterwards, although any such blessing has no legal significance or standing.
- 2.2 The Government is considering introducing same sex marriage and the religious registration of civil partnership. The Government is also committed to providing protections for some in society who may have concerns about same sex marriage.
- 2.3 The proposed protections are as follows:
 - Religious and belief bodies who wish to solemnise same sex marriage or register civil partnerships will have to opt in to do so.
 - Religious and belief celebrants will only be able to solemnise same sex marriage or register civil partnership if their body has decided to opt in.
 - If a religious or belief body decides to opt in, there will be no obligation on individual celebrants to solemnise same sex marriage or register civil partnerships.
 - The draft Bill makes it clear that there is no obligation on religious and belief bodies and celebrants to opt in to solemnise same sex marriage and register civil partnerships.
 - The Scottish Government has asked the UK Government to amend the Equality Act 2010 to provide further protection for individual religious and belief celebrants.

- The draft Bill has a provision making it clear that the introduction of same sex marriage does not affect existing rights under the European Convention of Human Rights and elsewhere to freedom of thought, conscience, religion and expression.
- The Lord Advocate has indicated that he will publish prosecutorial guidelines on allegations of breach of the peace and threatening or abusive behaviour arising out of opposition to same sex marriage.
- On education, the Government welcomes the role denominational education plays in Scotland and has no plans to change this.
- In relation to teachers, the Government is of the view that any objections teachers have to using certain educational materials should be discussed by the local authority or senior teaching staff with the teacher.
- The Scottish Government is not seeking any changes to existing UK employment legislation, which protects teachers and other employees, from unfair dismissal.
- The Education (School and Placing Information) (Scotland) Regulations 2012, in force from 8 December 2012, makes provision on how parents will be informed of any sensitive aspects of learning.
- The Scottish Government will retain the existing rights of parents to opt their children out of programmes of sex education.
- The Scottish Government intends to update Education Circular 2/2001, on the conduct of sex education in schools. This update will take account of the introduction of same sex marriage. The Government will consult key stakeholders on changes to Circular 2/2001.

2.4 The Scottish Government is committed to removing the requirement to divorce before a married transgender person can obtain a full Gender Recognition Certificate. However, the draft Bill does not include the amendments needed to remove this requirement. The Government also recognises that the option of divorce should remain available where one or both of the couple wishes to end the relationship. The Government also recognises that transgender people in a civil partnership may wish to stay in the relationship and obtain a full Gender Recognition Certificate. The Scottish Government is currently in discussion with the UK Government and other stakeholders on how to address these issues.

2.5 As well as the introduction of same sex marriage and the registration of civil partnership through religious ceremonies, the Government intends that the Bill will also make a number of other changes to marriage law, which have been under consideration for some time.

2.6 **Where civil marriage ceremonies can take place**

Under current legislation, civil marriage ceremonies can take place at a Registrar's office or at premises approved by the local authority. By contrast, civil partnership ceremonies can take place at a Registrar's office or at any place agreed by the Registrar and the couple, so long as the place is not a religious premise. The Council currently offers civil partnerships at places approved for civil marriage ceremonies.

The Government considers that couples wishing a civil marriage ceremony should also be able to have the ceremony at any place agreed by the Registrar and the couple. Therefore, the draft Bill removes the references to “approved places” from the legislation.

Once these provisions come into force, it will become possible in Scotland to have a civil marriage ceremony, for both opposite sex and same sex marriage, at any place agreed by the Registrar and the couple. However, it will still not be possible to have a civil ceremony in religious premises, as Registrars in Scotland do not carry out official functions in religious premises.

2.7 Establishment of belief as a third type of marriage ceremony

Currently, there are two types of marriage ceremony in Scotland: religious and civil. Since June 2005, celebrants belonging to the Humanist Society of Scotland have been authorised on a temporary basis to solemnise marriage. Such marriages have been classed as “religious” under marriage law, but the beliefs of such organisations are non-religious.

The draft Bill contains provisions to establish a third category of marriage ceremony in Scotland. This category of ceremony would be known as “belief”. The arrangements for authorising “belief” celebrants will be along the same lines as for authorising religious celebrants.

For opposite sex marriage:

- Belief bodies will be prescribed by regulations made by the Scottish Ministers. Celebrants belonging to these bodies would then be automatically authorised to solemnise opposite sex marriage; or
- Belief bodies will be able to nominate celebrants to the Registrar General for authorisation; or
- The Registrar General could grant a belief celebrant a temporary written authorisation to solemnise marriages, in accordance with any terms or conditions as specified in the authorisation.

For same-sex ceremonies, the system will be opt-in and bodies and celebrants will have to choose to take part in same sex ceremonies.

It will also be possible, in future, to have a belief ceremony to register a civil partnership.

2.8 Checks to ensure the reputation of the marriage system in Scotland

The Scottish Government wishes to ensure the integrity of Scottish marriage ceremonies, both opposite sex and same sex, which are legally recognised by the state and proposes to introduce tests which a religious or belief body would have to meet before the body’s celebrants could be authorised to solemnise a marriage or register a civil partnership. The tests would be laid down by regulations and the draft Bill gives the power for regulations to be made.

2.9 Authorising religious and belief celebrants to solemnise same sex marriage

The Government's proposed arrangements for authorising religious and belief celebrants to solemnise same sex marriages are summarised as follows:

- Religious and belief bodies and their celebrants will have to opt in to solemnise same sex marriage.
- Some religious and belief bodies may be prescribed by regulations.
- This means that all of their celebrants would be authorised to solemnise same sex marriage.
- In other cases, religious and belief bodies could nominate celebrants who wish to solemnise same sex marriage to the Registrar General.
- Bodies prescribed by regulations, or which have nominated celebrants to the Registrar General could also seek the temporary authorisation of particular celebrants.
- The draft Bill provides, for the avoidance of doubt, that there is no obligation on a body or celebrant to seek authorisation to solemnise same sex marriage.
- A celebrant who wishes to solemnise same sex marriage, but is in a body which has decided against opting in could not solemnise same sex marriage. This is because the authorisation would need to come from the regulations (and the body would not have asked to be prescribed) or from the celebrant's name having been put forward by the body to the Registrar General (and the body would not have done this).
- Schedule 23 to the Equality Act 2010 already has exemptions for religious and belief bodies from some equality requirements where these are imposed, because they are necessary to comply with the doctrine of the organisation or to avoid conflict with the strongly held religious or belief convictions of a significant number of the religion's or belief's followers.
- The Scottish Government has asked the UK Government for an amendment to the Equality Act to protect an individual celebrant who is opposed to same sex marriage, because it conflicts with the celebrant's religious faith or belief even though the celebrant's religious or belief body has chosen to solemnise same sex marriage.

2.10 Civil Registrars

It has been suggested that there should be a specific opt-out for Registrars to solemnise same sex marriage.

The Scottish Government does not agree with this suggestion, for a variety of reasons:

- Registrars (unlike religious and belief celebrants) are carrying out a civil function. Therefore, it is not appropriate to provide an opt-out based on religious or belief grounds.
- The registration of civil partnerships by Registrars has worked well in Scotland.
- The Government expects that the solemnisation of same sex marriage by Registrars would also work well.

- Opt-out provision for Registrars would cut across the relationship Registrars have with their local authority employers. The Government does not consider it would be helpful to intervene in this way.

2.11 Freedom of speech

The Government proposes the following actions to protect freedom of speech:

- The draft Bill has a provision making it clear that the introduction of same sex marriage does not affect existing rights under the European Convention of Human Rights and elsewhere to freedom of thought, conscience, religion and expression.
- The Lord Advocate intends to publish prosecutorial guidelines on allegations of breach of the peace and threatening or abusive behaviour arising out of opposition to same sex marriage.

2.12 Education

The Government proposes the following actions to protect teachers and parental rights:

- There is existing provision in the Education (Scotland) Act 1980, allowing parents to withdraw children from religious education. These rights will remain in place.
- Education Circular 2/2001 sets out a school's responsibilities in providing sexual health education. Parents will continue to have the right to withdraw their child from such a programme.
- However, the Government does not plan to allow parents to opt children out of any class which might happen to mention same sex marriage or civil partnerships. The Government considers that this could impact adversely on a child's right to receive an education.
- The Education (School and Placing Information) (Scotland) Regulations 2012 makes provision on how parents will be informed of any sensitive aspects of learning.
- The Government is committed to continuing to support denominational education. In particular, the Government has made it clear that it welcomes the valued contribution made by Roman Catholic schools to education in Scotland.
- The faith aspects of the curriculum in Roman Catholic schools will continue to be determined by the Scottish Catholic Education Service.
- The Government does not consider legislation is required in relation to education as a result of same sex marriage.
- In particular, the Government does not consider that employment law should be amended to provide specific protection for teachers (or others, such as NHS chaplains) who have concerns about same sex marriage. There is existing UK employment law, which covers matters such as unfair dismissal.
- The Scottish Government intends to update Education Circular 2/2001, on the conduct of sex education in schools to take account of the introduction of same sex marriage.

2.13 Children

- The Government will not ban people who are against same sex marriage from fostering children. The existing guidance on who can apply to be a foster parent states that: “As well as diverse family structures, valuing diversity also relates to welcoming applications from families from different ethnic, religious or cultural backgrounds”. The Government will consider if amendments to the guidance are needed to make it clear that Christians and people of other faiths can apply to become foster parents and that a would-be fosterer should not be rejected just because of his or her views on same-sex marriage.
- Same sex couples already have the right to adopt. This right will continue following the introduction of same sex marriage.
- No changes are planned to devolved legislation in relation to parental responsibilities and rights (PRRs). However, consequential amendments will be required to (reserved) human fertilisation and embryology legislation which, currently, refers to female civil partners. In future, the legislation will need to cover female same sex spouses, given the introduction of same sex marriage in Scotland.

2.14 Recognition of same sex marriages from elsewhere

The Scottish Government intends to recognise any same sex marriages which have been registered elsewhere in the UK. The Scottish Government will discuss further with the UK Government and the Northern Ireland administration the recognition across the UK of same sex marriages registered in Scotland.

Overseas same sex marriages will be recognised in Scotland as marriages and overseas registered civil partnerships will be recognised in Scotland as civil partnerships under the same conditions as overseas opposite sex marriages.

2.15 Civil partnerships

The Scottish Government intends to proceed to allow civil partnerships to be registered through religious ceremonies and belief ceremonies. The arrangements proposed in Scotland are different to those in England and Wales.

The Government's intention is that the arrangements for authorising religious and belief bodies and their celebrants to register civil partnerships will be on the same lines as the arrangements for the authorisations of bodies and celebrants to solemnise same sex marriage. Therefore:

- Some religious and belief bodies may wish to opt in and seek to be prescribed by regulations, so that all of their celebrants are authorised to register civil partnerships.
- Other religious and belief bodies may wish to nominate specific celebrants so that they can be authorised by the Registrar General to register civil partnerships.
- Religious and belief bodies who have opted in may wish to nominate temporary celebrants so that they can be authorised by the Registrar General.
- There is no obligation to opt in.

- The protections generally are along the same lines as for religious and belief bodies and celebrants in relation to the solemnisation of same sex marriage.

2.16 Changing civil partnerships to marriages

As some existing civil partners may wish to change their partnership to a marriage, the Government proposes the following:

- There will be no requirement to change. The status of civil partnerships remains the same and existing civil partners will remain as civil partners unless they choose to change status.
- Only civil partnerships registered in Scotland can be changed into a same sex marriage in Scotland. (Although it will be possible to change civil partnerships registered under UK consular and armed forces legislation).
- A couple seeking to change their civil partnership to a marriage would have to attend a marriage ceremony in Scotland. Practical concerns about identity fraud (a growing issue in relation to sham marriage) mean that marriage preliminaries and associated checks will, so far as possible, reduce the risk that the couple are not who they say they are.
- The notice of intention to marry, completed by those applying to marry, will be amended so that each member of a couple changing their civil partnership to a marriage can describe their status as "extant civil partnership".
- The civil partnership is dissolved when the marriage is created.

The prescribed statutory fees for a civil marriage ceremony will apply to changing a civil partnership to a marriage; i.e. a civil marriage ceremony where the £125 fee applies will be available to couples seeking to change their civil partnership to a marriage. Couples will also be able to opt for an enhanced service at a higher fee, if they so wish. Alternatively, the couple could change their civil partnership to a marriage through a religious or belief ceremony by an authorised celebrant for same sex marriage, following the legal preliminaries with the Registrar.

2.17 Dissolution of civil partnerships

No changes to the current arrangements for dissolution of civil partnerships are proposed.

2.18 Opposite sex civil partnerships

The Government does not intend to introduce opposite sex civil partnerships for a number of reasons:

- It considers that the Bill should concentrate on key issues – same sex marriage; religious and belief registration of civil partnerships and changes to marriage law which have been planned for some time.
- There has been no detailed consideration by the Scottish Government or, so far as the Government is aware, by anybody else of the implications of introducing opposite sex civil partnership. Such further consideration would be needed.

- It is highly uncertain what recognition, if any, Scottish opposite sex civil partnerships would be given by the UK Government and by overseas jurisdictions.
- Opposite sex civil partnership could lead to substantial financial costs to the public purse, if it is entered into by people who are currently just living together, as cohabitants do not have the same rights as civil partners and married couples
- Opposite sex couples have now, and will continue to have, the option of getting married.

2.19 Transgender people

The current position is that a married person seeking to be recognised in a new gender is required to divorce before obtaining the full Gender Recognition Certificate. The Government is putting forward detailed proposals so that a transgender person can obtain the full Gender Recognition Certificate, while staying in his or her relationship, if that is what both parties want.

Impact on Council Registration Service

- 2.20 The proposals contained in the Draft Bill should not impact greatly on the Council's Registration Service.

Edinburgh currently carries out more civil partnership registrations than any other local authority in Scotland. The Registration Service will still be required to deal with all the legal preliminaries leading up to same sex marriages and civil partnership registrations which take place in Edinburgh. The proposal to change existing civil partnership registrations to marriages may lead to some additional work and an increase in income from fees for the Registration Service. It is assumed that leading up to the introduction of the Bill the number of civil partnership registrations being carried out may fall as couples await the change in legislation to allow them to have a marriage ceremony.

- 2.21 There may be some loss of income from couples opting for a same sex religious or belief marriage ceremony instead of a civil partnership ceremony, which is currently the only option available.
- 2.22 The removal of the requirement for the Registration Service to approve places for civil ceremonies will result in an estimated loss of income to the Council of about £14,000 per year.
- 2.23 Currently, Registrars can perform civil ceremonies only at approved venues. The proposed legislation will permit a civil ceremony at any location specified by the couple and agreed by the Registrar. This may lead to an increase in the number of civil ceremonies carried out by the Registration Service. There may be health and safety considerations to take account of regarding some proposed venues and the Service will need to assess whether it is appropriate for staff to officiate at a civil ceremony where the health and safety of staff may be at risk.

3. Recommendations

- 3.1 It is recommended that the Corporate Policy and Strategy Committee:
- a) notes the Scottish Government’s proposals for the introduction of same sex marriage and religious and belief registration of civil partnership;
 - b) notes that it is open to each political party to submit its own views to Government on the proposed legislation;
 - c) notes that the Government is inviting the Council’s views on the detail of the legislation and associated guidance and agrees to submit comments on the proposed legislation;
 - d) approves the responses to the consultation questions presented in Appendix 1;
 - e) notes the impact that the proposals may have on the Council’s Registration Service.

Mark Turley

Director of Services for Communities

Links

Coalition pledges

Council outcomes CO10 – Improved health and reduced inequalities

Single Outcome Agreement SO2 – Edinburgh’s citizen’s experience improved health and wellbeing, with reduced inequalities in health.
SO4 – Edinburgh’s communities are safer and have improved physical and social fabric.

Appendices Appendix 1 – Marriage and civil partnership consultation

Appendix 1

CONSULTATION QUESTIONS

These consultation questions seek views on the detail of the legislation that will: introduce same sex marriage; allow civil partnerships to be registered through religious or belief ceremonies; and make other changes to marriage law.

Impact assessments

Question 1

Do you have any comments on the impact assessments prepared in relation to the proposed legislation?

The Council agrees that any repeal of the requirement for the conduct of civil ceremonies to take place in licensed premises will result in a loss of income to local authorities. An estimate of the potential loss to the City of Edinburgh Council is £14,000 per annum.

General changes to marriage law

Question 2

Do you have any comments on allowing opposite sex and same sex civil marriage ceremonies to take place anywhere agreed between the registrar and the couple, other than religious premises?

The Council notes these proposals and, should they be accepted, will endeavour to take any necessary steps to implement them.

Question 3

Do you have any comments on establishing belief ceremonies as a third type of ceremony, alongside religious and civil, for getting married in Scotland?

The Council notes these proposals but does not have any further comments.

Question 4

Do you have any comments on amending section 8 of the Marriage (Scotland) Act 1977 so that Church of Scotland deacons are authorised automatically to solemnise opposite sex marriage?

The Council notes these proposals but does not have any further comments.

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?

The Council notes the proposals to ensure celebrants are properly trained and that they will not be permitted to carry out marriages solely or principally as a business venture. The Council will continue to take steps to ensure that its civil registrars are properly trained.

Question 6

Do you have any comments on abolishing the concept of marriage by cohabitation with habit and repute where a couple erroneously believed themselves to be married but it transpired after one of them died that the marriage was not valid?

The Council notes these proposals but does not have any further comments.

Same sex marriage

Question 7

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

The Council notes these proposals but does not have any further comments.

Question 8

Do you have any comments on opt-outs for civil registrars who do not wish to solemnise same sex marriage?

The Council agrees that there should not be an opt-out for civil registrars and endorses the reasons given for this proposal by the Scottish Government in the consultation paper.

Question 9

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

The Council notes the proposals but does not have any further comments.

Question 10

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

The proposals will not change the City of Edinburgh Council's current approach to discussing all types of relationships in the context of PSE or other subjects, with children and young people in an age and stage appropriate way.

We discuss the concept of relationships within loving positive relationships, which would cover civil partnership and marriage of all types.

The proposal makes it clear that guidance from the Roman Catholic Church would be issued to RC schools, but that there would not be a withdrawal of pupils from classes if this was discussed, unlike options in RE and Sexual Health. It would also be possible to have these issues discussed in other subjects such as Modern Studies.

Question 11

Do you have any comments on the proposals on the impact of same sex marriage on legislation, the common law or on private arrangements?

No comment

Question 12

Are you aware of legislation where there is a need to make it clear that references to marriage or spouse should not extend to both opposite sex and same sex marriages or spouses?

The Council is not aware of any such legislation.

Question 13

Do you have any comments on the proposed approach to the law on adultery?

The Council notes the proposals but does not have any further comments.

Question 14

Do you have any comments on the proposed approach to the law on permanent and incurable impotency?

The Council notes the proposals but does not have any further comments.

Question 15

Do you have any comments on the proposed approach to the law on bigamy?

The Council notes the proposals but does not have any further comments.

Civil partnership

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 Council suggests that consideration should be given to the term 'civil' because this would not be a civil function if carried out by religious or belief celebrants.

Question 17

Do you have any comments on the proposals for changing civil partnerships to a marriage?

The Council notes the proposals and, should they be accepted, will endeavour to implement any necessary procedural changes.

Transgender people

Question 18

Do you have any comments on the detailed proposals for allowing transgender people in a relationship to stay together, if they and their partner so wish, when obtaining the full Gender Recognition Certificate?

The Council notes the proposals but does not have any further comments.

Further Comments

The Council welcomes the opportunity to comment on this consultation from the perspective of its impact on the Council in relation to its civil registrar function. The Council notes that the consultation paper does not make it clear why the Scottish Government considers that civil partnership registrations will still be required after same sex marriage has been introduced, and also why if they are still required they will only be for same sex couples and not open to heterosexual couples.