

Briefing for

**The Scottish
Government Consultation**

on

**The Registration of
Civil Partnerships**

and

Same-Sex Marriage

Consultation closes
Friday 9th December 2011



CARE for Scotland

RESPONDING TO THE CONSULTATION

The consultation relates to two proposals. The first proposal is to allow civil partnership ceremonies to be conducted on religious premises. The second proposal would redefine marriage to include same-sex couples.

There are a number of questions relating to both proposals. You do not need to respond to all the questions as some of the questions ask regarding the detail of implementing the proposals. However if you only have limited time to respond, please make answering Q10 your priority, as this is a proposal to redefine marriage, which would have major long-term consequences for our society.

The following guide is designed to assist you in answering the questions. However, we would encourage you to draft your own answers based on the points below rather than repeat it verbatim.

- The on-line consultation can be found at <http://www.scotland.gov.uk/Consultations/Current> (Scroll down to ‘Registration of civil partnerships...’)
- If you prefer not to answer the consultation questions but instead to make a personal, written submission you can e-mail it to:

familylaw@scotland.gsi.gov.uk

or post it to:

Sandra Jack, Scottish Government, St Andrew’s House, Regent Road, Edinburgh EH1 3DG
by 9 December 2011

If you have any queries contact Sandra Jack on 0131 244 2025

- When making a submission you should make it clear whether
 - your submission can be made public on the Scottish Government web site
 - your name and address can be made public on the Scottish Government web site
- If you only have limited time to respond, please make answering Q10 your priority, as this is a proposal to redefine marriage, which would have major long-term consequences for our society.

CIVIL PARTNERSHIPS

Question 1 – This question asks if Civil Partnerships should be registered through religious ceremonies. CARE suggests that you answer **no** to this question.

Civil Partnerships were introduced in 2004 to allow two people of the same sex to form a legal contract in order to receive similar rights to married couples. At the time they were introduced the UK Government made a conscious decision that they should be only civil legal contracts and that they should include no religious element. For that reason the Government specifically excluded civil partnerships from being allowed to take place on religious premises. However, an amendment put forward to the Equality Act 2010 by Lord Ali overturned this ban in England & Wales. The Scottish Government is proposing to bring the law in Scotland into line with the law in England & Wales.

In CARE's view civil partnerships by their very nature are not marriage and, therefore, should not occur in a religious setting. Civil partnerships are by nature, as their name implies and the UK Government intended, matters of a civil and secular nature. They reside wholly within the secular realm, rather than the sphere of religion. Religious groups are able, if they wish, to conduct blessing services for those entering a civil partnership, but the state should have no role or input into such occasions.

Moreover, the introduction of such legislation would be used to bring pressure on major denominations, such as the Church of Scotland, to change their teaching and practice with regard to same-sex relationships. The Scottish Government's consultation paper shows that in 2010 only 465 civil partnerships occurred in Scotland. The likelihood, therefore, is that only a small percentage (perhaps no more than 10%) of civil partnerships would occur on religious premises. To change the law to accommodate such a tiny number of people, but in so doing to cause considerable difficulties for churches and other religions, is disproportionate.

By allowing civil partnerships to be registered through religious ceremonies the Scottish Government would not only renege on assurances given by the UK Government at the time that civil partnerships were introduced, but could open up churches to threats of legal action under the UK's Sexual Orientation Regulations should churches not allow civil partnerships on their premises or celebrants refuse to officiate at these occasions. Even if a suitable 'conscience clause' is included in the legislation in order to ensure that churches and celebrants are not compelled to participate, it is likely that over time pressure will be applied for this conscience clause to be removed in order to eliminate alleged 'homophobia' or so called 'heterosexism' in society.

Question 2 – This question asks if the law in Scotland should be similar to proposals of the UK Government to keep civil partnerships as 'civil' institutions, while permitting the registration to be on religious premises. CARE recommends that you either **abstain** or answer **yes** to this question.

The UK Government does not propose to allow civil partnerships to be conducted by a minister of religion or to have a religious element in terms of Scriptural readings etc. So although this proposal would allow civil partnerships to be registered on religious premises, it would not permit the registration to be religious. Therefore those wishing to have a civil partnership registered at religious premises would have to involve a civil registrar and have a wholly secular form of words. CARE is of the view that it is important to maintain as much distinction between civil partnerships and marriage as possible. For that reason we would not wish ministers of religion to be able to officiate at civil

partnership ceremonies or for Scripture to be read or hymns sung within this context. However, some people may not wish to comment on a question of detail that assumes that civil partnerships will be allowed in religious premises and will choose to abstain on this question.

Question 3 – This question asks whether ministers and other religious celebrants should be allowed to register civil partnerships in churches and other religious premises. CARE recommends that you answer **no** to this question.

Civil partnerships were established as being wholly secular in nature when they were introduced. They should remain so, otherwise it would add further to the confusion over their status and would imply that they are ‘same-sex marriage’ in all but name. If the law is changed to allow civil partnerships to be conducted by religious celebrants and/or on religious premises it would add further impetus to demands to redefine marriage.

Question 4 – This question asks if religious celebrants should be allowed to conduct civil partnerships at other locations other than religious premises.

CARE has no view on this matter as we do not think that religious celebrants should conduct civil partnerships. Supporters may wish to **abstain** on this question. Alternatively some people who oppose civil partnerships in principle, may wish to answer **no** to this question.

Question 5 – This question asks if religious bodies should not be required to register civil partnerships.

We are surprised that the Scottish Government has chosen to ask this question. To force religious bodies to conduct civil partnerships would be a gross violation of religious liberty and freedom of conscience. It is concerning that the Scottish Government might even think it appropriate to force churches and other religious bodies to conduct civil partnerships. CARE suggests that you answer **yes**.

Question 6 – This question asks if religious celebrants should not be allowed to register civil partnerships if their church or religious body chooses not to register civil partnerships.

CARE suggests that you answer **yes** to this question. If the Scottish Government allows religious celebrants to register civil partnerships despite the opposition of their religious body, it will significantly undermine the authority and disciplinary structures within those institutions. This will add further to the pressure being placed by secular society on those who adhere to Biblical standards of morality.

Question 7 - This question asks if individual religious celebrants should be allowed not to participate in civil partnerships in the circumstances in which their religious body has decided to do so.

CARE considers that this is an issue for each religious body to decide for itself and, therefore, suggests you may wish to **abstain**. It is not matter that the Scottish Government should seek to impose a view on religious groups through the mechanism of civil law. The principle of freedom of association would entail respect by civil authorities for the internal governance on matters of doctrine by religious bodies. If a particular denomination decided to change its position and to require all its celebrants to adhere to this, it would be for the members of that church to make a decision whether to remain within the church or to leave and join another denomination. It is not the role of the state to interfere in the governance of religious bodies or in *matters spiritual*. Having said that we would not wish to see anyone forced to

participate in civil partnership ceremonies against their will and recognise that those who share this view may wish to answer **yes** to this question.

Question 8 – This question asks which of two options regarding the mechanics of administering civil partnerships you prefer. The first option proposes to amend the Marriage (Scotland) Act 1977 to allow all celebrants registered to conduct marriages to be permitted automatically to register civil partnerships. The second option would establish a separate list of celebrants able to conduct civil partnerships for which religious bodies submit nominated persons.

CARE suggests that **option 2** is preferable should the Scottish Government decide to press ahead with its proposals. This is because option 1 could make religious celebrants vulnerable to challenges under the Equality Act 2010 for refusing to conduct civil partnership ceremonies. Although, at present, religious celebrants would have a strong defence owing to exemptions contained in the Equality Act, it is possible that this position may well change in the future. Moreover, it is evident that many in the homosexual rights lobby would wish to see these exemptions for churches removed from the Equality Act or, at least, interpreted narrowly by the UK courts.

Question 9 – This question asks if you agree with the Scottish Government that no specific legislation is required to ensure that religious premises cannot be used to conduct civil partnership ceremonies against the will of the religious body concerned.

CARE is of the view that it would be preferable if any legislation to allow civil partnerships to occur on premises owned or rented by religious bodies contained a specific clause stating that such premises could not be used against the will of the religious body concerned to conduct civil partnership ceremonies. We suggest that you answer **no** to this question. If no such clause exists then it is likely that some clergy or management committees will allow their church buildings to be used to conduct civil partnership ceremonies despite formal opposition to such ceremonies by the denomination. This will cause disciplinary issues for churches and stir up unnecessary dissention and division within denominations.

MARRIAGE

The second part of the consultation document proposes to amend the Marriage (Scotland) Act 1977 to allow same-sex couples to ‘marry’. This proposal would **redefine marriage from its natural, historical, cultural and legal understanding of being between a man and a woman**. Marriage should not be redefined by a minority and forced on the majority.

The questions in this section of the document mirror those in the section relating to civil partnerships. Much of our reasoning in coming to a view on how to answer the questions is the same for both sets of questions. For that reason, we have kept our comments to a minimum in this section and suggest that you refer to the equivalent questions when reading this section. We include additional comments in the section below.

Question 10 – This question asks if the law regarding marriage in Scotland should be amended to allow same-sex couples to ‘marry’. CARE recommends that you answer **no** to this question.

CARE does not accept the false distinction contained within the consultation document between religious and civil marriage. Marriage is not specifically a religious institution. Marriage defined as

being between a man and a woman for the purpose of raising children has been enshrined in human nature and creation from the outset of human history. As such there is no definitional distinction between religious and secular marriage. Marriage is marriage whether conducted in a religious or secular context. It is fundamental to our very nature and societal wellbeing.

The current law provides homosexual and lesbian couples with rights to formalise, support and protect their commitment. It also grants them tax and pension benefits. This proposal, therefore, is solely about the symbolism of marriage. Marriage is an important symbol for many people. Should this be overturned to suit the agenda of a small minority? Marriage exists as a social institution to protect and nurture children. If it were just about recognising love, why is it limited to two persons? Indeed the suggestion was made at an Equality and Human Rights Commission conference in February that legal rights should be opened up to those in three-way relationships. If same-sex marriage is taken forward in legislation, it will be a matter of time before demands will be made for marriage to be redefined further to include bi-sexual and polygamous relationships.

CARE questions the accuracy of the claim made by some MSPs that the majority of the Scottish public favour the legalisation of homosexual marriage. The latest Office of National Statistics opinion poll shows the opposite, that a majority are opposed to redefining marriage in this way.

CARE does not accept that the state has authority to redefine marriage. Rather the governing authorities do have a role in recognising and supporting marriage in civil law. This view is shared by Reformed, Anglican, Catholic and Orthodox Christians. Some non-conformist Christians might argue that the principle of separation of church and state implies that the state may define the civil aspects of marriage as it sees fit as long as this definition is not imposed on any religious group. CARE, whilst recognising that some supporters may disagree with our position, is of the view that marriage has been defined by God at the outset of human history and that secular government has no mandate to redefine it.

Question 11 – This question asks if religious celebrants should not be required to ‘marry’ same-sex couples. We recommend that you answer **yes** to this question. (See the comment on question 2).

Question 12 – The questions asks if you agree that only same-sex **civil** ‘marriage’ should be legalised.

CARE recommends that you **abstain** on this question. We recognise that some people may wish to answer **yes** to the question, not because they support same-sex ‘marriage’, but in order to persuade the Scottish Government to limit its plans to only civil marriage, not religious as well. Others may wish to say ‘**no**’, on the basis that no same sex ‘marriage’ should be permitted, even civil. We believe that even civil same-sex ‘marriage’ is a contradiction in terms. Marriage, whether civil or religious, is by its nature between a man and a woman. One of its key purposes is the procreation and raising of children. Same- sex relationships cannot be procreative and, therefore, are not marriage.

There are religious liberty concerns for who work as registrars and who would have a conscientious objection to officiating at same-sex ‘marriages’. They may be forced out of their jobs should civil marriage be redefined. As the case of Lillian Ladele shows, already Christians are being forced out of employment as civil registrars by the civil partnership legislation. Some local authorities are more willing than others to accommodate the religious beliefs of staff. However, the courts have ruled that councils can force their staff to officiate at civil partnership ceremonies. Should civil same-sex

marriage be introduced, this trend of excluding and forcing Christians to work and act against their conscience as registrars is likely to intensify.

Question 13 – This question asks if you agree with the legalisation of both same-sex civil **and** religious marriage. CARE recommends that you answer **no** to this question.

CARE is opposed to the legalisation of same-sex marriage, whether within a civil or religious context. We do not recognise the false distinction between religious and civil marriage. Rather marriage, whether conducted in a religious or civil context, is an institution central to all society and for the purpose, among others, of raising children in a safe and secure environment.

If same-sex religious marriage is introduced at the request of a few small religious groups, it will create division and hugely increase the pressure being exercised internally by a minority who wish to see a revision of church teaching on same-sex relationships.

Moreover, in the future equality laws may be used to force ministers and churches to officiate at same-sex marriages. Despite the Scottish Government's assurance that no minister or church will be forced to participate, this scenario remains a real possibility as equality law is reserved to Westminster. It is not within the power of the Scottish Government to prevent this from occurring. Moreover, should at any point the European Court of Human Rights rule that there is a right to same-sex marriage (which is possible the more states legalise this practice), then ministers may be forced to participate or risk being sued.

Question 14 - This question asks if you agree that religious bodies should not be required to solemnise same-sex marriage. CARE recommends that you answer **yes** to this question.

We are surprised and alarmed that the Scottish Government has even included such a question in the consultation document. We are concerned as to how the Scottish Government will respond should the majority of respondents answer no to this question. In that case, either the government will ignore the majority of respondents, in which case there was little point consulting about this matter, or it will seek to impose same-sex marriage on those churches and ministers who seek to uphold the definition of marriage as being only between a man and a woman.

Question 15 – This question asks if church ministers and other religious celebrants should **not** be allowed to solemnise same-sex marriage if their religious body has decided not to do so. CARE recommends that you answer **yes** to this question. (see comment Q6)

Question 16 – This question asks if individual ministers and religious celebrants should not be forced to 'marry' same-sex couples in cases when their denomination has chosen to do so. CARE recommends that you answer **yes** to this question.

To force individual ministers to officiate at same-sex marriages in contravention of their conscience and deeply held convictions would be a gross violation of religious liberty.

Question 17 – This question assumes that same-sex marriage will be legalised and asks which of two options you prefer in its administration. Option 1 proposes to allow all those registered to conduct marriages under the Marriage (Scotland) Act 1977 to conduct same-sex marriages. Option 2 would require religious bodies to propose those celebrants who wish to be included on a separate register of those licenced to conduct same-sex marriages.

As with regard to our comments on question 8, CARE suggests that should the Scottish Government choose to press ahead with its proposal to redefine marriage that **option 2** would be the preferable alternative.

We note that the consultation states that the Equality Act 2010 may need to be amended in order to allow religious bodies and celebrants not to marry same-sex couples. Such an amendment is outwith the legislative competence of the Scottish Parliament. It is a matter which is reserved to Westminster. There is no guarantee that Westminster will legislate to allow such an exemption or that such an exemption will not be removed at a later date. For that reason **option 2** is preferable as it would involve the Scottish Government maintaining a separate list of those who are licensed to conduct same-sex marriages. This might provide some degree of protection for those with a conscientious objection to ‘marrying’ same-sex couples but who wish to be able to marry heterosexual couples. Those who fall into this category could ask to be included only on the list of those licensed to marry heterosexual couples.

Question 18 – This question asks if you agree that no specific legislation is required to ensure that religious premises may not be used to conduct same-sex marriages in contravention to the views of the religious body concerned. CARE suggests that you answer **no** to this question. (See comments Q9)

This will cause disciplinary issues for churches and stir up unnecessary dissention within churches.

Question 19 – This question asks if the legalisation of same-sex marriage goes ahead whether civil partnerships should continue to run in parallel to the new system.

CARE is of the view that as much distinction as possible should be made between marriage and civil partnerships. We recognise that you may wish to **abstain** on this question. We have much sympathy with such a response. However, some people may wish to answer **yes** to the question as it will help to maintain some distinction between marriage and civil partnerships. Moreover, many homosexual people do not wish to get married and would prefer to be in a civil partnership as they do not consider their relationships to be a marriage. We agree that same-sex relationships are not marriage.

Question 20 – This question asks about any other points you wish to make with regard to matters such as the expected costs of the proposed changes.

The Consultation has only considered the immediate administrative costs of the proposed changes in the law. However, if the Scottish Government allows both ‘marriage’ and civil partnerships for homosexual and lesbian couples, it is likely that a heterosexual cohabiting couple will take legal action to force the extension of civil partnerships to heterosexuals. In addition to the hugely detrimental impact that such a change would in relation to the place of marriage in society, it has been estimated that the costs of such a change could be as high as £5bn on a UK-wide scale.

If you need any further help, advice or information please feel free to contact

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