

## The Registration of Civil Partnerships, and Same Sex Marriage

### Response from the Scottish Council of Jewish Communities

[Click here](#) to read the Scottish Government consultation paper

#### **The Jewish Community in Scotland**

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 and a very small Masorti community in Glasgow.

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, Reform, Liberal, and Masorti congregations, and Scottish Rainbow Covenant, a network for LGBT Jews in Scotland. The views expressed in this response represent the official position of the various branches of the Jewish community in Scotland.

#### **Ministerial Foreword to the consultation**

We have previously expressed concern at the apparent hierarchy of equalities, for example in the Scotland Act which defines "equal opportunities" in terms of a list in which religious beliefs are not just last, but grammatically subordinate and equated with political opinions.<sup>1</sup> However, in the Ministerial Foreword, the Deputy First Minister goes even further: by contrasting "*religious tolerance and the freedom to worship*" with "*equality and diversity*", she appears to suggest that religious belief may threaten equality and diversity, rather than itself being a protected characteristic in terms of the Equality Act 2010. This impression is emphasised by the use of the pejorative "tolerance". One tolerates that which one does not like or of which one does not approve, so the fact that "*The Government believes in religious tolerance*" is not entirely reassuring.

This apparently negative view of religion is further emphasised by the Minister's pious "*hope that everyone will treat those with different or opposing views with courtesy and respect, in accordance with the very highest standards of democratic discourse.*" The Scottish Government consults on very many issues each year. Were there not "*a variety of views*" on all of these there would be no necessity for extensive consultation, yet we are not aware that the Scottish Government has previously thought it necessary to enjoin respondents to behave with common courtesy towards one another. The supposition that faith communities might not behave with respect unless specifically instructed to do so is insulting, and gives little confidence that their views will be given proper consideration.

---

<sup>1</sup> Scotland Act 1998, Schedule 5 <http://www.legislation.gov.uk/ukpga/1998/46/schedule/5>

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

The various branches of the Jewish community hold differing views about the registration of civil partnerships through religious ceremonies.

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 religious civil partnership registrations, it does not wish to impose its views on others.

The Liberal Jewish community strongly supports the introduction of religious civil partnership ceremonies, and hopes that legislation to permit these will be introduced at the earliest opportunity.

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.

Debate is still ongoing in the Masorti community, which has also yet to take a view.

### **2. Do you think that the proposals in England and Wales on registration of civil partnerships in religious premises would be appropriate for Scotland? If you have answered no, please explain what elements of the proposals in England and Wales you consider inappropriate for Scotland.**

We agree with the proposals for England and Wales in so far as they state that the introduction of civil partnership registrations in religious premises will be “*entirely voluntary. It will be for each faith group to decide whether they wish to host civil partnership registration; none can be forced to do so against their will.*”

However, there is already occasional confusion about the different requirements for “recognised celebrants” and “approved premises” north and south of the border, and some Scottish congregations have occasionally received inaccurate advice from London-based head offices that has resulted in inadvertent errors. The parallel use in Scotland of different systems for marriages and religious registration of civil partnerships would only confuse matters further. We therefore urge that the same procedure should apply to all marriage and religious civil partnership ceremonies, and that the celebrant, and not the premises, should require to be approved for both.

### **3. Do you agree with allowing religious celebrants to register civil partnerships in religious premises?**

The Orthodox community will not allow religious celebrants to register civil partnerships in its religious premises under any circumstances. The Liberal

community supports the registration of civil partnerships by a religious celebrant in religious premises. The Reform and Masorti communities have not expressed a view.

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

As we have already stated, if legislation is introduced to permit the registration of civil partnerships through a religious ceremony, procedures should, so far as possible, be the same as for marriage. We therefore agree that the focus should be on the celebrant and not the venue, and that ceremonies should be permitted in any mutually agreed location, provided that prior permission has been received from the owner.

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

All branches of the Scottish Jewish community strongly agree that religious bodies that do not wish to do so, should not be required to register civil partnerships.

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

All branches of the Scottish Jewish community that expressed a view strongly agree that religious celebrants should not be allowed to register civil partnerships in opposition to the view of the religious body to which they are affiliated. Were such a situation to arise, it is our view that the civil partnership should remain valid, but that the religious body should be entitled to discipline or dismiss the celebrant concerned without fear of facing a claim of unfair dismissal.

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

All branches of the Scottish Jewish community strongly agree that individual religious celebrants should not be required to act counter to their conscience to register civil partnerships, even if the religious body to which they are affiliated permits religious civil partnership registration.

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

All branches of the Scottish Jewish community that expressed a view have a strong preference for Option 2. This will enable those religious bodies and celebrants that do wish to register civil partnerships to make a positive statement by opting in to the system, whilst also ensuring that those that do not wish to do so are not inadvertently registered to provide this service.

**9. 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?**

We emphasise that no premises should be used for the registration of civil partnerships without the owner's permission. However, permitted uses are a matter for agreement and contract between owner and tenant, and we agree that legislation is not required.

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

The Orthodox Jewish community believes that marriage is a relationship between a man and a woman, and, while respecting and welcoming all individuals, whatever their sexual orientation, strongly disapproves of the introduction of same-sex marriage. It recognises, however, that there are differing views, and, provided that it is not required to carry out ceremonies against its conscience, does not seek to impose its view on others.

The Liberal Jewish community strongly supports the introduction of same-sex marriage, and hopes legislation to achieve this will be introduced at the earliest opportunity. It recognises, however, that there are differing views, and does not seek to impose its view on others to require them to carry out same-sex marriage ceremonies against their conscience.

The Reform and Masorti communities have not expressed a view.

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

All branches of the Scottish Jewish community strongly agree that neither religious bodies nor celebrants should be required to solemnise same-sex marriages against their conscience.

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

The Orthodox Jewish community does not agree with the introduction of same-sex marriage, however celebrated. The Liberal community believes that same-sex couples should have the choice of a religious or civil marriage ceremony according to their preference. The Reform and Masorti communities have not expressed a view.

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

The Orthodox Jewish community does not agree with the introduction of same-sex marriage, however celebrated. The Liberal community believes that same-sex couples should have the choice of a religious or civil marriage ceremony according to their preference. The Reform and Masorti communities have not expressed a view.

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

All branches of the Scottish Jewish community strongly agree that religious bodies that do not wish to do so, should not be required to solemnise same-sex marriage.

**15. 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?**

All branches of the Scottish Jewish community that expressed a view strongly agree that religious celebrants should not be allowed to solemnise same-sex marriages in opposition to the view of the religious body to which they are affiliated. Were such a situation to arise, it is our view that the marriage should remain valid, but that the religious body should be entitled to discipline or dismiss the celebrant concerned without fear of facing a claim of unfair dismissal.

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

All branches of the Scottish Jewish community strongly agree that individual religious celebrants should not be required to act counter to their conscience to solemnise same-sex marriages, even if these are permitted by the religious body to which they are affiliated.

**17. 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?**

All branches of the Scottish Jewish community that expressed a view have a strong preference for Option 2. This will enable those religious bodies and celebrants that do wish to solemnise same-sex marriages to make a positive statement by opting in to the system, whilst also ensuring that those that do not wish to do so are not inadvertently registered to provide this service.

**18. 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?**

We emphasise that no premises should be used to solemnise same-sex marriages without the owner's permission. However, permitted uses are a matter for agreement and contract between owner and tenant, and we agree that legislation is not required.

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

The view of the Liberal Jewish community is that civil partnerships should remain available, and that religious registration of civil partnerships should be introduced, since some people are uncomfortable with the language and institution of marriage. The Orthodox, Reform, and Masorti communities have not expressed a view.

**20. Do you have any other comments? We are particularly interested in your views on:**

**i) Potential implications of the proposals for transgender people**

The Liberal Jewish community strongly supports the right of transgender people to continue in established marriages and civil partnerships. The Orthodox, Reform, and Masorti communities have not expressed a view.

**ii) Possible transitional arrangements**

The Liberal Jewish community strongly supports the administrative conversion of existing civil partnerships into marriages where this is the wish of the couple concerned. The Orthodox, Reform, and Masorti communities have not expressed a view.

**iii) Recognition of Scottish same-sex marriages elsewhere**

The Liberal Jewish community hopes that same-sex marriages solemnised in Scotland would be recognised as such throughout the UK, even if England and Wales have not introduced same-sex marriage in their jurisdiction. If, however, this is not the case, same-sex marriages solemnised in Scotland should be recognised as civil partnerships elsewhere in the UK (as is currently the situation for those who have, for example, entered into a same-sex marriage in Canada).

The Orthodox, Reform, and Masorti communities have not expressed a view.

**iv) Any comments on forced marriage**

All branches of Judaism unequivocally condemn forced marriage.

**v) Any comments on sham marriage**

All branches of Judaism unequivocally condemn sham marriage.

**vi) Potential financial implications**

The Liberal Jewish community regard the introduction of religious civil partnership registration and same-sex marriage as a matter of justice and equality, and, as such, believe that the initial set-up costs should be borne by the Scottish Government. The Orthodox, Reform, and Masorti communities have not expressed a view.

**vii) Potential equality implications**

As matters of both justice and equality, no religious body or celebrant should be compelled to act against their conscience, nor be prevented from acting in accordance with their conscience. Those that wish to provide religious civil partnership registrations or to solemnise same-sex marriages, should, therefore, be permitted to do so. Those that do not wish to register civil partnerships through religious ceremonies, or to solemnise same-sex marriages, must not be required to do so.

## Summary and Conclusion

Although the Orthodox and Liberal Jewish communities disagree about the acceptability of same-sex marriage and the registration of civil partnership through religious ceremonies, neither wishes to impose their view on the other, or on other faith communities that take a different stance. Furthermore, there is general agreement between the Orthodox and Liberal communities regarding the practicalities of introducing same-sex marriage and religious civil partnership registration:

- Religious bodies and individual celebrants must not be forced or coerced into acting against their conscience.
- Religious bodies that wish to celebrate religious civil partnership registrations and same-sex marriages should be able to opt into the system rather than being required to opt out if they do not wish to offer this service, and
- within those religious bodies that do opt in, individual celebrants should be able to opt in but should not be required to do so.
- The consequences of a celebrant officiating at a religious civil partnership registration or same-sex marriage contrary to the decision of the relevant religious community, should not impact upon the couple concerned, but on the dissenting celebrant.
- The focus should remain on the celebrant and not be transferred to “approved premises”.
- Use of premises for religious civil partnership registration and same-sex marriage should be at the discretion of the owner, and not subject to legislation.

-----  
Note: The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland comprising Glasgow, Edinburgh, Aberdeen, and Dundee as well as the more loosely linked groups of the Jewish Network of Argyll and the Highlands, and of students studying in Scottish Universities and Colleges. SCoJeC is Scottish Charitable Incorporated Organisation SC029438, and its aims are to advance public understanding about the Jewish religion, culture and community. It works with others to promote good relations and understanding among community groups and to promote equality, and represents the Jewish community in Scotland to government and other statutory and official bodies on matters affecting the Jewish community.