

The Marriage and Civil Partnership (Scotland) Bill
Response from the Scottish Council of Jewish Communities

[Click here](#) to read the 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 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, Liberal, and Reform 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.

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

The Liberal Jewish community strongly supports the introduction of same sex marriage, and religious civil partnership ceremonies. However, while it would hope to register to solemnise these once the proposed legislation is enacted, it does not wish to impose its views on others.

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.

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.¹ This is reflected in the Ministerial Foreword, in which the

Cabinet Secretary for Health and Wellbeing contrasts “equality” with “religious freedom”, appearing to suggest that religious freedom may threaten equality, rather than itself being a protected characteristic in terms of the Equality Act 2010.

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

We are content with the impact assessments.

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?

We are content with the proposals set out in the consultation paper.

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?

We are content with the proposals set out in the consultation paper.

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?

We do not wish to comment, since we regard this as a matter solely for the Church of Scotland.

5. Do you have any comments on establishing tests that a religious or belief body must meet before its celebrants can be authorized to solemnise marriage or register civil partnership?

While we agree with the importance of maintaining “the reputation of Scottish marriage ceremonies”, we are concerned that some of the proposed tests are too restrictive and onerous, particularly for small faith communities and congregations.

The Jewish community as a whole, and, in particular, the three strands of Judaism currently represented in Scotland, have a long record of carrying out religious ceremonies, including religious marriages that are also recognised as civil marriages, and their Rabbis always meet the family in advance to discuss the ceremony and its implications. It is, however, conceivable, that other branches of mainstream Judaism may wish to establish a congregation in Scotland in the future, but, as new institutions, these would, necessarily, not have any track record in Scotland. We would therefore appreciate an assurance that decisions about the reputations of any faith community or branch thereof, will be considered on the basis of their activities outwith as well as within Scotland, and always in discussion with authoritative representatives of the relevant faith community.

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

We are concerned at the proposal that “The religious or belief body and their celebrants would not be allowed to solemnise marriages or register civil partnerships for profit or gain.” It is standard practice for synagogues, as hotels and other marriage premises, to charge a fee for the use of their premises for marriage ceremonies, and also for the officiating Rabbi to charge a professional fee. Naturally these should not be (and are not) unduly onerous, but to forbid such fees would be unreasonable (and also seems at odds with the Business and Regulatory Impact Assessment, which lists an increase in marriage tourism among the envisaged benefits of the Bill).

Whilst we unreservedly condemn forced and sham marriages, we believe that requiring all celebrants to undergo formal training in these areas would be unduly onerous on those faith communities for which these are not an issue. The Jewish community is too small to support a rabbinical college in Scotland. All Rabbis working in Scotland will, therefore, have trained either in England or elsewhere, but the Scottish Jewish community does not have any means by which to influence the curriculum in those institutions, and the cost implications of sourcing and funding additional training for those Rabbis who obtain employment in Scotland, would be likely to be prohibitive.

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 the died that the marriage was not valid?

We are concerned about the effect that the abolition of Sections 3(3) and (4) of the Family Law (Scotland) Act 2006 may have on people who married in a religious ceremony outwith the United Kingdom, but did not also have a civil ceremony.

Since such marriages are not an infrequent occurrence, we do not consider the argument that abolition “would keep our law up to date” to be valid. Furthermore, although we are aware of the possibility of a claim under Section 29 of the 2006 Act if one of the couple died intestate, we do not regard it as sensible or compassionate to require the bereaved spouse to apply to the courts to request a discretionary order for payment from the estate.

We therefore urge that Section 18 of the draft Bill should be withdrawn. However, we also recommend that information provided to migrants should include notification that such marriages are not recognised in Scottish Law, and advise consideration of a second marriage ceremony, under Section 20 of the Marriage (Scotland) Act 1977.

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

We strongly agree with the proposal for a dual opt-in system, in which faith communities have first to register to solemnise same sex marriages, and then nominate celebrants to officiate at such ceremonies. We also strongly support the proposed amendment to the Equality Act 2010 to protect those faith communities and Ministers who do not wish to solemnise same sex marriages. However, we would propose an amendment to section 25A (2) to read (proposed addition in italics):

“Sub-paragraph (1) permits a refusal relating to sexual orientation only if it is made because to solemnise the marriage or, as the case may be, register the civil partnership would conflict with the approved celebrant’s religious or philosophical beliefs *or those of the faith community to which the approved celebrant is affiliated.*”

We do not consider the proposals for prescribing religious and belief bodies to carry out same sex marriage to be workable, since even if a religious or belief body could initially “assure the Registrar General ... that all of their celebrants are content to carry out these ceremonies”, the subsequent decision of even one celebrant to change his or her mind would “require the bodies to notify the Registrar General as soon as they become aware that they have a celebrant or celebrants who do not wish to marry same sex couples or register a civil partnership [and] The Government would then take steps to remove the body from the prescribed list in the regulations.” This would be entirely unworkable as well as causing considerable inconvenience to same sex couples whose marriages were planned to take place in the near future, since the removal of the entire faith or belief body would mean that no celebrants belonging to it would still be approved to conduct such ceremonies.

We therefore support the alternative proposal put forward in the consultation paper, that if “the religious or belief body to which they belong has decided that some or all of their celebrants may, if they wish, solemnise same sex marriage or register civil partnership”, that religious or faith body “would be able to send the Registrar General a list of celebrants who they wished to be authorised to solemnise same sex marriage or register civil partnerships.”

We also agree with the temporary authorisation of celebrants for a specific ceremony or period, as is currently the case for opposite sex couples who wish their marriage to be solemnised by a Minister who, for example, lives outwith Scotland. In such situations, we would expect the Registrar General to take steps – as is currently done in the case of opposite sex marriages – to confirm that the relevant person is indeed a bona fide Minister, authorised by the relevant religious or belief community to conduct such marriages.

In view of the safeguards proposed in the consultation paper, we believe it to be very unlikely that a Minister would be able to solemnise a same sex marriage in opposition to the views of his or her faith community. We do not, however, believe this to be impossible since, for example, with the Minister’s permission, he or she might be nominated by a different branch of the relevant faith community to that by which he or she was employed. If such a situation were to arise, it is our view that the marriage should remain valid, but that the religious body employing the Minister should be entitled to take appropriate disciplinary action.

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

Whilst it is important that people throughout Scotland should be able to avail themselves of the new legislation, it is unreasonable to introduce a new contractual requirement for existing civil registrars that may require some to choose between their job and their conscience. We therefore recommend that an opt-out provision should be available to existing employees, provided that there is another civil registrar in the area who is willing to officiate at same sex marriage ceremonies, but

that civil registrars who take up employment after the commencement of the Act, and who will, therefore, have known of the requirement before applying for the job, should not have this option.

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

We welcome the Scottish Government's commitment to uphold Convention rights to freedom of thought, conscience, religion, and expression. We are, however, concerned at the one-sidedness of the proposal that "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", and urge that these guidelines should also explicitly relate to similar behaviour arising out of support for same sex marriage.

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

We welcome the Scottish Government's commitment to continue existing provisions on the management of denominational schools, and assurance that it "has no intention of requiring any denominational school to act contrary to the guidelines/policy established by ... religious authorities with a role in denominational education."

We agree that parents, pupils and teachers should have the right to express their views about same sex marriage, as on other subjects, and that they should engage on these issues "in an open, inclusive, and respectful way". We welcome the commitment to continue to allow parents to withdraw their children from sexual health education classes, but agree that it would not be practicable to introduce a similar provision for any class in which the subject of same sex marriage might happen to be raised, since this may often occur on the spur of the moment in response to a pupil's comment or question, without the teacher having had any prior intention to discuss the issue during that lesson.

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?

We are content with the proposals set out in the consultation paper.

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?

Section 15 of the Family Law (Scotland) Act 2006 inserted a new clause 3A into the Divorce (Scotland) Act 1976, relating to religious divorce. This provision, which was requested by the Jewish Community, comes into effect when

*(2)(a) the applicant is prevented from entering into a religious marriage by virtue of a requirement of the religion of that marriage;
and*

(2)(b) the other party can act so as to remove, or enable or contribute to the removal of, the impediment which prevents that marriage.

Since the Orthodox Jewish Community will not under any circumstances, carry out same sex marriages, and since Liberal and Reform authorities do not require the consent of both parties in order to issue a religious divorce, this legislation does not require to be extended to same sex marriages.

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

We are content with the proposals set out in the consultation paper.

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

We are content with the proposals set out in the consultation paper.

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

We are content with the proposals set out in the consultation paper.

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?

We strongly agree with the proposal for a dual opt-in system, in which faith communities have first to sign up to register civil partnerships, and then nominate celebrants to officiate at such ceremonies. We also strongly support the proposed amendment to the Equality Act 2010 to protect those faith communities and Ministers who do not wish to register civil partnerships. However, we would propose an amendment to section 25A (2) to read (proposed addition in italics):

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We do not consider the proposals for prescribing religious and belief bodies to register civil partnerships to be workable, since even if a religious or belief body could initially “assure the Registrar General ... that all of their celebrants are content to carry out these ceremonies”, the subsequent decision of even one celebrant to change his or her mind would “require the bodies to notify the Registrar General as soon as they become aware that they have a celebrant or celebrants who do not wish to marry same sex couples or register a civil partnership [and] The Government would then take steps to remove the body from the prescribed list in the regulations.” This would be entirely unworkable as well as causing considerable inconvenience to same sex couples whose civil partnership registration ceremonies were planned to take place in the near future, since the removal of the entire faith or belief body would

mean that no celebrants belonging to it would still be approved to conduct such ceremonies.

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

We are content with the proposals set out in the consultation paper, and believe that bureaucracy should be kept to a minimum for those couples who wish to change their civil partnership into a marriage.

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?

We agree that couples should not be required to divorce in order for one partner to receive a full Gender Recognition Certificate, and that bureaucracy associated with converting an opposite sex marriage to a same sex marriage should be kept to a minimum. However, we also welcome the Scottish Government’s recognition that some people will not wish to remain in such a marriage, and their statement that “obtaining an interim GRC will remain grounds for divorce”.

Nomenclature

Until now, for purposes of marriage and other legislation, the Jewish community has been designated “The Hebrew Congregation”. This has not been entirely satisfactory, since, whilst several synagogues in Scotland use the words ‘Hebrew Congregation’ in their name, the term does not have any wider meaning. Furthermore, the fact that

the then Glasgow New Synagogue (now Glasgow Reform Synagogue) does not include "Hebrew Congregation" in its name, resulted in some temporary difficulties with the then General Register Office for Scotland, which hesitated to authorise their Rabbi to conduct marriages, and required to be convinced that a synagogue that was not known as a "Hebrew Congregation" was indeed part of the Jewish community.

Since different sections of the Jewish community have differing views about same sex marriage and religious civil partnership ceremonies, a single term will no longer suffice, since branches of the community will require to be separately identified in Regulations. We therefore propose that the branches of the community currently represented in Scotland should be identified as "The Orthodox Jewish Community in Scotland", "The Liberal Jewish Community in Scotland", and "The Reform Jewish Community in Scotland", and that in future, the community as a whole should be referred to as "The Jewish Community" and not "The Hebrew Congregation".

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.

In preparing this response we have consulted widely among members of the Scottish Jewish community.