



## **Civil Partnership (Scotland) Bill**

### **Response from the Scottish Council of Jewish Communities**

The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland. SCoJeC advances public understanding about the Jewish religion, culture and community, by providing information and assistance to educational, health, and welfare organisations, representing the Jewish community in Scotland to Government and other statutory and official bodies, and liaising with Ministers, MSPs, Churches, Trades Unions, and others on matters affecting the Jewish community. SCoJeC also provides a support network for the smaller communities and for individuals and families who live outwith any Jewish community or are not connected with any Jewish communities, and assists organisations within the Scottish Jewish community to comply with various regulatory requirements. SCoJeC also promotes dialogue and understanding between the Jewish community and other communities in Scotland, and works in partnership with other organisations and stakeholders to promote equality, good relations, and understanding among community groups.

In preparing this response we have consulted widely among members of the Scottish Jewish community, including with all branches of Judaism represented in Scotland, and it therefore reflects all of their differing views. The majority of the Jewish community in Scotland is affiliated to Orthodox Judaism, which has three synagogues in Glasgow, and one in each of Edinburgh and Aberdeen. In addition there is a Liberal Jewish community in Edinburgh, a Reform synagogue in Glasgow, and an unaffiliated Jewish community in Tayside and Fife.

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#### **1. What is your view of the Bill's approach to achieving equality by making civil partnerships available to different sex couples, rather than closing future civil partnerships to all couples?**

We are content that different sex couples should have the opportunity to enter civil partnerships. As yet, however, the different branches of the Jewish community have not come to any definite conclusion as to their recognition of this relationship. At present, the Orthodox Jewish Community tends towards the view that they would not wish to officiate at different sex civil partnership ceremonies, and would not regard civil partnership as equivalent to marriage. However, some aspects of religious marriage law would pertain to different sex civil partnerships, so that following the dissolution of a civil partnership, the Orthodox Jewish community would require a person wishing to marry according to religious law to obtain a *get* (religious divorce). We therefore welcome section 9 of the Bill, "Postponement of decree of dissolution where religious impediment to marry exists" (see below for more information).

The Liberal Jewish Community has long discussed religious partnership (*shutafut*) ceremonies, and would be happy to offer these for couples who do not want to marry but who would like formal recognition of their relationship. It may wish to nominate Rabbis recognised to officiate at such ceremonies also to register different sex civil partnerships so that the single ceremony would bring about a relationship that was recognised in both Liberal Judaism and civil law.

**2. What will the impact of the Bill and its provisions be on you, your community or your organisation? Give consideration as to whether there is any impact on human rights or equality issues for any particular groups of people.**

**Section 5**

**Persons who may register civil partnerships between persons of different sexes**

We have some concerns about the proposed procedure for prescribed religious and faith organisations to nominate a person to register civil partnerships between different sex couples. The Bill states that, if not a celebrant of a prescribed body, he or she must be "recognised by a religious or belief body so prescribed as entitled to Civil Partnership (Scotland) Bill 3 register civil partnerships between persons of different sexes on its behalf" (section 5(2)(b)(2A)(a)(i)), (our emphasis). This removes protection from those religious bodies that do not wish to register different sex civil partnerships since it would permit their clergy or other officials to be nominated by a different branch of the same religion, and so act contrary to the strong beliefs and ethos of their employer. (It is, for example, conceivable that a Liberal or Reform Jewish community might "recognise" an Orthodox Rabbi as entitled to register different sex civil partnerships on their behalf, even though the Orthodox Jewish community by which the Rabbi was employed, might not wish to participate in the registration of different sex civil partnerships.)

To resolve this concern, we suggest amending section 5(2)(b)(2A)(a)(i) to state:

"(2A) A civil partnership between persons of different sexes may be registered by and only by—

(a) a person who is—

(i) a celebrant of a religious or belief body prescribed by regulations made by the Scottish Ministers; or

(ii) not being a celebrant, is recognised by a religious or belief body so prescribed as entitled to register civil partnerships between persons of different sexes on its behalf, and is not a celebrant or other official of a religious or belief body that has indicated that it is opposed to registering civil partnerships between persons of different sexes"

**Section 7**

**Temporary authorisation of celebrants**

We also have some concerns about the proposed procedure for temporary authorisation of celebrants.

i) In our experience, when a couple request to be married by someone other than the Rabbi of the local synagogue, it is often because one or both partners comes from outwith Scotland and wish the officiant to be their own Rabbi. In such cases, National Records of Scotland (NRS) make enquires, through the Scottish Council of Jewish

Communities, as to whether the Rabbi concerned is “recognised by”<sup>1</sup> the relevant branch of the Jewish community as a Rabbi authorised to officiate at Jewish weddings. The Rabbi need not necessarily be from Scotland, or be a member of a branch of Judaism with a presence in Scotland or even in the UK, provided that his or her qualifications and bona fides are recognised by a branch of Judaism that is established in Scotland. Once the Rabbi’s bona fides have been confirmed, the wedding at which he or she officiates will be recognised by the relevant authorities as bringing about both a religious and a civil marriage.

We anticipate that NRS will follow much the same procedure to check the bona fides of celebrants before granting temporary authorisations to register different sex civil partnerships. However, whilst a celebrant from outwith Scotland may well be recognised by a branch of Judaism in Scotland as authorised to officiate at different sex civil partnerships, he or she may well not be “*a member*” of the relevant branch. We presume this terminology (section 7(2)(c)(3A)) is to protect those religious bodies that do not wish to register different sex civil partnerships, so that their clergy and other officials may not be nominated by a different branch of the same religion (for example, to prevent an Orthodox Rabbi from being nominated by a Liberal Jewish community to officiate at a different sex civil partnership, even if he personally were willing to be so nominated). We welcome this protection (which, as we have already pointed out, is lacking in section 5(2)(b)(2A)(a)(i) but are concerned that different sex couples who may wish their civil partnership to be registered by a celebrant from a branch of Judaism that does register different sex civil partnerships but does not have a presence in Scotland, will be prevented from having the celebrant of their choice. Furthermore, the requirement that the religious or belief body subscribed to by the potential celebrant “*has nominated members*” (our emphasis) would also exclude celebrants from branches of Judaism that do not have a presence in Scotland even if those branches approve the registration of different sex civil partnerships.

This is inequitable, since, as we have already explained, a couple celebrating their marriage is able to choose a celebrant from outwith Scotland and even the UK.

To resolve this issue, enabling different sex couples entering a civil partnership also to enjoy the wider choice of celebrants that is available to couples getting married while maintaining full protection for those faith communities that do not wish to register different sex civil partnerships, we suggest a possible amendment to the Bill:

7(2)(c)(3A) “The Registrar General may grant an authorisation to a person under subsection (1)(b) in relation to civil partnerships between persons of different sexes only if the person is recognised as entitled to register civil partnerships between persons of different sexes on its behalf by a religious or belief body—

(a)(i) that is prescribed by virtue of section 94A(2A)(a)(i); or

(ii) not being prescribed by virtue of section 94A(2A)(a)(i), has indicated that it is not opposed to registering civil partnerships between persons of different sexes, and is not a celebrant or other official of a religious or belief body that has indicated that it is opposed to registering civil partnerships between persons of different sexes”.

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<sup>1</sup> Marriage (Scotland) Act 1977 section 8(1)(a)(ii)  
<http://www.legislation.gov.uk/ukpga/1977/15/section/8>

## Section 9

### Postponement of decree of dissolution where religious impediment to marry exists

We strongly welcome the inclusion of this section which is analogous to Section 3A of the Divorce (Scotland) Act 1976, and without which the Bill could have had a substantial negative impact on the Jewish community.

As we have stated above, in terms of religious law, following a dissolution of a civil partnership, some branches of the Jewish community would first require a person wishing to marry according to religious law to obtain a *get* (religious divorce).

If a different sex couple – married or civil partners – were to have only a civil divorce or dissolution but no *get*, according to some understandings of Jewish law, the relationship would still be ongoing. Orthodox Judaism would consider any subsequent relationship as adulterous, and the wife and the children of a mother in such a relationship would suffer severe religious restrictions.

Experience shows, however, that sometimes, one partner refuses to give or to receive a *get*. This may be simply out of ill-will towards the other person, or may be intended as a bargaining or blackmailing tool in their dispute over maintenance or residence and access. A woman in this situation is referred to as being ‘chained’ to her husband (an *agunah*), and may remain in this state for many years unless her husband or different sex civil partner changes his mind. She is not able to move on and build a new life.

Civil law cannot compel a couple to agree to a *get* – indeed, any compulsion would invalidate the *get*. However, Section 3A of the Divorce (Scotland) Act 1976 permits a judge to include one party’s request for a *get* among all the other factors being considered (such as custody of and access to children, division of property, alimony, etc), to postpone the grant of divorce, and either to recommend the reluctant party to think again, or to adjust the divorce settlement to take account of the fact that there is no *get*.

We are not aware whether 3A has ever been used in the courts although that does not mean that this has not happened. However, legislation is not only of value when actively employed in the courts, but also when it acts as a deterrent and prevents an undesirable situation from arising. Prior to the introduction of Section 3A, the Scottish Council of Jewish Communities used to receive several calls each year asking for help because a recalcitrant husband had refused a *get* unless his wife consented to an inequitable divorce settlement that would leave her in a difficult and vulnerable situation.

Following the implementation of Section 3A in 2007 we were consulted on a number of occasions when one party to a divorce initially refused to cooperate with the *get*. We understand that in every case these refusals were withdrawn after attention had been directed to the legislation.

The number of such cases has continued to decline and during the last three years we have not received any requests for help on this matter. While that is obviously not conclusive, on the basis that human nature is unlikely to have undergone a drastic change, it suggests the existence of Section 3A is encouraging cooperation, and discouraging blackmail between divorcing couples. In our view, therefore, Section 3A has been of great value in preventing this occurring, and so in protecting vulnerable individuals from being victimised by their former partners.

We therefore strongly welcome the inclusion of the equivalent Section 9 in the Civil Partnership (Scotland) Bill which we hope will prevent from the outset any similar issues in cases of dissolution of different sex civil partnerships.

**3. The Bill will make consequential changes to existing legislation to carry through the effect of the main change. Do you have any comment to make on these changes?**

We have no additional comments about changes to existing legislation other than those relating to Sections 5 and 7, both of which amend the Civil Partnership Act 2004, and about which we have commented above.

**4. Is there anything else about civil partnerships that should be included in (or excluded from) the Bill? If so, what changes would you like to see and why? Please explain your reasons.**

We note the Scottish Government's reasons for not extending civil partnership to sibling couples<sup>2</sup> but disagree with the premise that because "inheritance tax ... is a reserved matter ... If changes are needed, it would seem more proportionate to amend the legislation on inheritance tax rather than introduce sibling civil partnership." Since inheritance tax is indeed a reserved matter, the Scottish Parliament is powerless to amend the relevant legislation, while it is within the power of the Scottish Parliament to implement a legal status that would protect sibling couples living together in mutually supportive and financially interdependent relationships from, for example, the loss of their joint home to inheritance tax on the death of the first sibling.

**5. Will the Bill result in any resource implications for your organisation or you as an individual? If so, please explain and provide any supporting information.**

We would expect some relatively minor costs to respond to requests from NRS to check the bona fides of Rabbis from outwith Scotland who are invited to officiate at religious different sex civil partnership ceremonies. In addition, we expect that we would initially incur some costs to provide information to separating different sex civil partners. However, once the presence of Section 9, "Postponement of decree of dissolution where religious impediment to marry exists", is generally known and understood by family lawyers and others in the court system, we would not expect the Bill to have any significant resource implications for the Scottish Council of Jewish Communities.

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<sup>2</sup> Policy Memorandum 44-45

[https://www.parliament.scot/S5\\_Bills/Civil%20Partnership%20Scotland%20Bill/SPBill57PMS052019.pdf](https://www.parliament.scot/S5_Bills/Civil%20Partnership%20Scotland%20Bill/SPBill57PMS052019.pdf)