CONSULTATION QUESTIONS

The registration of civil partnerships

Question 1 (Paragraphs 2.12 and 2.13)

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

Yes ☐
No ☐
Don’t know ☐

Please give reasons for your answer.

Threat to religious liberty
By changing the law to allow civil partnerships to be registered through religious ceremonies the Scottish Government would be opening up religious groups and individuals to the possibility of legal action. There are extremely complex issues surrounding both the organisation of religious groups and the ownership of religious premises. We do not believe that any scheme can adequately account for this reality.

There are two main areas of concern in response to any scheme:
1. can it prevent litigation against religious celebrants or groups who don’t agree with civil partnerships, and
2. can it prevent religious celebrants who do agree with civil partnerships going ahead in defiance of their religious group?

The consultation document itself observes, at para. 2.35, that ensuring religious bodies and religious celebrants do not have to carry out civil partnerships against their will “may require an amendment of the Equality Act 2010, which is generally reserved”. Religious civil partnerships must not be introduced unless the Scottish Government can guarantee religious freedom. It clearly cannot make this guarantee if, on its own admission, some of the necessary legislative changes are outside its powers.

Little demand for the change
As well as the threat to religious liberty, we question the demand for this change. There were only 465 civil partnerships registered last year in Scotland, and only 3,307 since civil partnerships were introduced in 2005.¹ The 2010 figure is in fact down on 2009, when there were 498,² and contrasts with 28,480 marriages in Scotland in 2010.³ The number of religious civil partnership ceremonies each year is likely to be very small. The UK Government’s response to the recent consultation in England and Wales on civil partnership registrations on religious premises illustrates that even groups who support the change have little certainty over how popular the scheme will be.⁴ Only six individual congregations said they would definitely consider “applying for approval of their religious premises for the registration of civil partnerships”.⁵ The risk to religious liberty posed by introducing religious civil partnership ceremonies greatly outweighs this small demand.

The secular nature of civil partnerships
As the consultation document observes: “The civil partnership arrangements were set up to be civil and secular in nature…” (para. 2.10). The civil partnership scheme was designed
and introduced on the basis that it would be “entirely secular”. The then UK Government gave repeated assurances on this point during the passage of the Civil Partnership Act in 2004. Permitting civil partnerships to be registered through religious ceremonies is a radical departure from this clear undertaking, and represents a fundamental change in the nature of civil partnerships.

Section 202 of the Equality Act 2010, a prerequisite to the proposals now being brought forward, came as a result of a backbench amendment. Initially the then UK Government strongly resisted the idea, saying it was “not a workable solution to this issue. Amending the Civil Partnership Act in this way could lead to inconsistencies with civil marriage, have an unexplored impact on devolved Administrations, and lead to confusion on what is permitted and what is required.”

Clearly the then UK Government was very concerned that a permissive amendment could be interpreted as a requirement. But it also objected because of the uncertainty the change would leave over the position of civil marriage, which by law must be entirely secular.

The UK Government was not alone in this concern. Bishop Michael Scott-Joynt, then Bishop of Winchester, warned in the House of Lords that the amendment would “blur the distinction between civil and religious marriage” and “also blur the characteristics of the civil partnership as distinct from marriage”. The Scottish Government has now admitted in its own consultation paper that “the proposed religious registration service outlined here would be very similar to a religious service for the solemnisation of marriage”. Here we see a clear statement of the blurring effect that would be caused by introducing religious civil partnerships.

By their very nature, civil partnerships were always intended to be a civil, not a religious matter. Para. 2.19 of the consultation document notes that it would not be suitable for registrars in Scotland to carry out official duties on religious premises because it: “would be contrary to the law, practice and tradition in Scotland, where a distinction has always been made between civil and religious ceremonies”. On that basis, the Scottish Government should not proceed with these plans.

Religious blessings for civil partnerships are already possible
The consultation document also states that “there is nothing to stop a same sex couple receiving a religious blessing for their union” (para. 2.10). Those same-sex couples wishing to have a religious blessing prior to or after their civil partnership registration are entitled to do so. This separation of the religious element from the registration is entirely appropriate given the secular nature of civil partnerships. It is also entirely consistent with civil marriage registration.

As mentioned above, the number of civil partnerships in Scotland is small, and the number of same-sex couples seeking a religious blessing is even smaller. Given the small numbers involved, it is far more appropriate to continue with the current arrangement of allowing those who wish to have a separate blessing ceremony rather than endangering the religious liberty of many by allowing religious civil partnership registrations.

Question 2 (Paragraphs 2.14 to 2.19)
Do you think that the proposals in England and Wales on registration of civil partnerships in religious premises would be appropriate for Scotland?

Yes ☐
No ☑
Don’t know ☐
If you have answered no, please explain what elements of the proposals in England and Wales you consider inappropriate for Scotland.

As our answer to question 1 indicates, we do not support any proposals on registration of civil partnerships in religious premises, or registration of civil partnerships through religious ceremonies.

We would also draw the attention of the Scottish Government to a House of Lords debate scheduled for 15 December on the regulations which implement the scheme in England and Wales. A motion has been tabled to annul The Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2011 because they fail to properly protect religious liberty.

The proposals for England and Wales are doubly unsuitable for Scotland given the different legal traditions in the two jurisdictions.

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**Question 3** (Paragraphs 2.20 to 2.24)

Do you agree with allowing religious celebrants to register civil partnerships in religious premises?

Yes ☐

No ☑

Don’t know ☐

Please give reasons for your answer

See answer to question 1.

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**Question 4** (Paragraphs 2.20 to 2.24)

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

Yes ☐

No ☑

Don’t know ☐

Please give reasons for your answer

See answer to question 1.

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**Question 5** (Paragraph 2.25)

Do you agree that religious bodies should not be required to register civil partnerships?
As our answer to question 1 indicates, we do not support any proposals on registration of civil partnerships in religious premises, or registration of civil partnerships through religious ceremonies. The question of a religious body registering civil partnerships would therefore not arise.

If religious civil partnerships were to be introduced, it should be self evident that no religious group should be required to register them. This question is therefore a remarkable one. To disagree with the statement that “religious bodies should not be required to register civil partnerships” would be to condone tyranny. In any civilised and democratic society, religious bodies and individuals cannot be required to act against their religious beliefs and their consciences. As we noted in our answer to question 1 above, the Scottish Government would have to ensure that any necessary amendments are made to the Equality Act 2010 before any new scheme was introduced. Furthermore, the legislation introducing the scheme would need clear and robust protections for religious freedom.

Question 6 (Paragraphs 2.26 and 2.27)

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

Yes ☑
No ☐
Don’t know ☐

Please give reasons for your answer

As our answer to question 1 indicates, we do not support the introduction of religious civil partnerships. The question of a religious celebrant registering a civil partnership if their religious body had decided against it would therefore not arise.

The proposal to allow religious civil partnership registrations would be an unprecedented legal change which opens up the internal procedures of a religious body to potential litigation. The Scottish Government would be precipitating this problem and would be under a moral obligation to fully protect religious bodies in Scotland. If religious celebrants were permitted to register civil partnerships in defiance of their religious body, then the internal lines of authority of the religious body in question would be undermined.

Question 7 (Paragraphs 2.28 to 2.30)

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

Yes ☑
As our answer to question 1 indicates, we do not support the introduction of religious civil partnerships. The question of a religious celebrant being required to register civil partnerships would therefore not arise.

If religious civil partnerships were to be introduced, religious celebrants should not be required to act against their beliefs. By introducing the scheme, the Scottish Government would be placing itself under a duty to protect the freedom of conscience of the individuals for whom its legislation caused problems. Conscientious objection is recognised and protected in several areas of the law, and this should be no different. As we noted in our answer to question 1 above, the Scottish Government would have to ensure that any necessary amendments were made to the Equality Act 2010 before any new scheme was introduced. Furthermore, the legislation introducing the scheme would need clear and robust protections for religious freedom.

Question 8  (Paragraphs 2.31 to 2.35)

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

Do you favour:

Option 1
Option 2  ✔
Neither

If you have another option, please describe it.

Obviously, given our answer to question 1, we do not believe either option is appropriate. However, if there was a choice between only options 1 and 2, option 2 would clearly be preferable. Option 2 would provide greater protection for freedom of religious conscience for those who do not opt in, reducing the risk that religious bodies and individual celebrants would be exposed to legal action for refusing to conduct civil partnership registrations.

However, a further step would be required to ensure that religious bodies and celebrants would not be forced to register civil partnerships against their will. As we indicated in response to questions 5 and 7, there would have to be explicit provisions in primary legislation to protect the freedom of religious bodies and celebrants in this matter.

The ‘automatic change’ envisaged by option 1 is wide open to both inadvertent or wilful misuse. For example, it could legally allow an individual minister to register civil partnerships even though his denomination has formally opposed its celebrants doing so.

Question 9  (Paragraphs 2.36 to 2.40)
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?

Yes ☐
No ☑
Don’t know ☐

Please give reasons for your answer

If the Scottish Government is going to go ahead and allow civil partnerships to be registered through religious ceremonies, then it must provide the most robust protections possible for religious liberty. This includes new primary legislation which makes explicit that religious premises cannot be used against the wishes of the relevant religious body.
Redefining marriage for the whole of society

At the outset, it is important to establish what this question is asking. At present, the definition of marriage is between one man and one woman, for life, to the exclusion of all others. Marriage has served Scotland well for centuries; it is a bedrock institution of society. Introducing same-sex ‘marriage’ would mean this centuries-old definition being comprehensively rewritten. Changing the law in this way will redefine marriage for the whole of society.

Marriage was not created by government, and it is wrong for government to redefine it. It is particularly wrong for politicians to redefine marriage in the face of opposition from a majority of the public. The 2008 British Social Attitudes survey revealed that 63% of the population were opposed to same-sex ‘marriage’. The 2010 Scottish Social Attitudes survey which has frequently been cited as showing that a majority of the Scottish public support same-sex ‘marriage’ was highly misleading. It did not make it clear that civil partnerships already exist, giving same-sex couples all the legal rights of marriage. This is important information to set the context for the question, particularly given the blurring of civil partnerships and marriage that occurs in media reports.10

If politicians are considering redefining something as fundamental as marriage, the public must be given an opportunity to vote directly on the matter. The question of redefining marriage should be the subject of a referendum, as also advocated by the Roman Catholic Church and former SNP leader Gordon Wilson.11

The question of redefining marriage is not one of legal rights for homosexuals. All the legal rights of marriage are already available through civil partnerships.

Procreation

One of the key purposes of marriage is the procreation of children. This is not the only purpose, but it is an important one. If marriage is redefined so that it is detached from this purpose, then it will be children that lose out. When children are detached from marriage, then marriage can become all about the demands of adults rather than the best interests of children.

Michael White, an associate editor at The Guardian newspaper, wrote in February this year: “Aside from all the theological, moral and cultural freight, there’s an important practical distinction here which goes to the root of any society – namely that heterosexual marriage is there to produce and raise children in a more or less stable environment.” He said that no amount of technology could “eliminate the need for a female egg and a male sperm to make a baby. On that fact rest all successful societies since the year dot.”12

In addition to this biological truth, children also need a mother and father so that they have male and female role models, but homosexual marriage denies them this. The evidence is
clear that children do better with a mother and a father. For example, research has found that “only 30% of young offenders grew up with both parents”, and: “Boys who grew up apart from their biological fathers were at least two to three times more likely to end up in prison as young adult males in mother-father households.” Similarly, “UK adults not brought up in a two-parent family were 75 per cent more likely to fail at school.”

**Polygamy**

Once marriage becomes detached from nature and becomes all about the rights of adults, then what assurance can there be that it will not be redefined further? On what legal or logical basis can the Scottish Government resist the demands of a bisexual who wants a three-some ‘marriage’ or a polygamist who wants to marry several wives? If marriage can be defined by a Parliamentary vote, then there is nothing to say that the redefinition will stop at removing the requirement for it to be between a man and a woman. There is an ongoing court case in Canada about this very subject. Homosexual ‘marriage’ was legalised throughout the whole of Canada and this has since been used to argue that polygamous marriage should be introduced.

**Religious freedom**

If marriage is redefined all the evidence suggests there will surely be an erosion of religious liberty and freedom of conscience. Disagreement is not hatred, but if same-sex marriage is legalised those who disagree with it will be labelled as intolerant – particularly in the public sector.

The potential impact of the redefinition of marriage on religious individuals can be seen from the cases that have arisen since civil partnerships were introduced. Registrars who were not willing to conduct civil partnership registrations have been dismissed. Expressing a view in a private capacity that civil partnerships in churches would be “an equality too far” has led to the demotion of a public sector employee. Guesthouse owners in Cornwall have been fined for upholding a married couples only policy for double rooms. There have been other similar examples. Shortly after homosexual adoption was legalised there were calls to close religious adoption agencies which disagreed.

There is a great danger that there will be a steady erosion of freedom. Parents should not be treated as intolerant just because they do not want their children to be taught that same-sex ‘marriage’ is the same as traditional marriage. People should not suffer discrimination at work just because they support traditional marriage.

The 2009/10 Integrated Household Survey found 1.1% of those in Scotland are lesbian, gay or bisexual. The 2001 census in Scotland found 0.15% of over-16s living in households were cohabiting as same-sex couples. That is just over 6000 people. By contrast, 2 million people were in households as a married couple.

Demand for civil partnerships has also been shown to be remarkably low, as discussed in response to question 1 - last year fewer than 500 civil partnerships were registered. Furthermore, it must be noted that some homosexuals do not even want the right to marry. Given this lack of demand, the redefinition of marriage for the whole of society, with all its consequences, cannot be justified.

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**Question 11 (Paragraph 3.13)**

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

- Yes [✓]
- No [ ]
As our answer to question 10 indicates, we do not support any proposals to redefine marriage. The question of religious bodies or celebrants being required to solemnise same-sex ‘marriage’ would therefore not arise.

If same-sex ‘marriage’ was to be introduced, it should be self evident that no religious body or celebrant should be required to solemnise such ‘marriages’. This question is therefore a remarkable one. To disagree with the statement that “religious bodies and celebrants should not be required to solemnise same sex marriage” would be to condone tyranny. In any civilised and democratic society, religious bodies and individuals cannot be required to act against their religious beliefs. The Scottish Government would have to ensure first that amendments are made to the Human Rights Act 1998, the Equality Act 2010 and other statutes to guarantee robust protections for religious freedom.

We note that this question appears to cover the same ground as questions 14 and 16.

Question 12  (Paragraphs 3.14 to 3.18)

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

Yes □
No □
Don’t know □

Please give reasons for your answer

It is clear from our answer to question 10 that we do not believe marriage should be redefined.

A marriage registration may be ‘civil’ or ‘religious’, but they both lead to the same single legal institution: marriage. That institution has one single definition in law: one man, to one woman, for life. This is what the Scottish Government is planning to re-write.

Question 13  (Paragraph 3.19)

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

Yes □
No □
Don’t know □

Please give reasons for your answer

See responses to questions 10 and 12.

Question 14  (Paragraphs 3.23 and 3.24)
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<th>Question 14</th>
<th>Do you agree that religious bodies should not be required to solemnise same sex marriage?</th>
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<th>Question 15</th>
<th>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?</th>
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<th>Question 17</th>
<th>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?</th>
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Do you favour:
Option 1  
Option 2  
Neither  
Don’t know  

Please give reasons for your answer and if you have another option, please describe it.

Again, given our answer to question 10, we reiterate our opposition to either of the options. However, if compelled to make a choice between them, we would choose option 2. It slightly reduces, but by no means eliminates, the scope for legal action against those who refuse to conduct same-sex marriage registrations.

Question 18 (Paragraphs 3.34 to 3.39)

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?

Yes  
No  
Don't know  

Please give reasons for your answer

If the Scottish Government is going to go ahead and redefine marriage, then it must provide the most robust protections possible for religious liberty. Introducing homosexual marriage is such a profound legal and cultural change that it is inconceivable that the existing legislative structure could properly protect churches and other religious bodies which have a conscientious objection.

Question 19     (Paragraph 3.41)

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

Yes  
No  
Don’t know  

Please give reasons for your answer

As our answer to question 10 indicates, we do not believe marriage should be redefined and so this scenario would not arise. It is well known The Christian Institute has always opposed civil partnerships in principle, but the arguments in this response address wider questions and would be supported by people who agree with civil partnerships.
We note that if marriage was redefined and civil partnerships were to be retained then there would be two options available to same-sex couples who wanted to obtain legal recognition for their relationship, but only one option for heterosexual couples. This situation would surely be open to legal challenge under human rights law and be unsustainable in the longer term. There is already a campaign and legal challenge pushing for heterosexual civil partnerships as well as the redefinition of marriage. Such a campaign would only gain momentum. The introduction of heterosexual civil partnerships, however, would carry a huge economic cost, given the associated implications for pension entitlements and tax benefits. The UK price tag of this move has been put at £5bn by Stonewall’s Chief Executive Ben Summerskill. This would surely be an expenditure the country can ill afford at this difficult economic time. There is in fact a far stronger case for providing legal protection to close family members or carers who share a house.

Question 20 (Paragraph 4.19)
Do you have any other comments?

Yes ☑
No ☐

We are particularly interested in your views on:

- potential implications of the proposals for transgender people (paragraph 3.42)
- possible transitional arrangements (paragraphs 3.43 and 3.44);
- recognition of Scottish same sex marriages elsewhere (paragraphs 3.45 to 3.49);
- any comments on forced marriage (paragraphs 3.51 and 3.52)
- any comments on sham marriage (paragraph 3.53)
- potential financial implications (paragraphs 4.01 to 4.08);
- potential equality implications (paragraphs 4.09 to 4.14).

As noted earlier, redefining marriage is such a profound question that it should be put to a vote of the public in a referendum. Marriage was not created by any government.

The Christian Institute is a non-denominational charity established for the promotion of the Christian faith in the UK and elsewhere. We have more than 3,600 supporters throughout Scotland, including over 500 churches and church ministers from almost all the Christian denominations.

We hold traditional, mainstream Christian beliefs about marriage and sexual ethics and seek to defend religious liberty.

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1 General Register Office for Scotland, Vital Events Reference Tables 2010, Table 7.10, see http://www.gro-scotland.gov.uk/files2/stats/ve-reftables-2010/ve10-t7-10.pdf as at 8 December 2011
3 Loc cit
Summary of responses – Civil partnerships on religious premises: A consultation, Government Equalities Office, page 19, para. 2.76

5. The Daily Telegraph, 7 November 2011


8. Ibid, col. 1202


11. The Scotsman, 12 October 2011

12. Guardian Online, 14 February 2011, see www.guardian.co.uk/politics/blog/2011/feb/14/same-sex-marriage-heterosexual-marriages as at 8 December 2011


14. Pinknews.co.uk, 4 February 2009, see www.pinknews.co.uk/news/articles/2005-11036.html as at 8 December 2011

15. The Daily Telegraph, 24 October 2011; The Mail on Sunday, 30 October 2011


17. 2001 Census Reference Volume, General Register Office for Scotland, March 2003, Table UV49

18. Loc cit

19. For example, The Guardian, 14 August 2010; The Times, 5 November 2011; Salon.com, 10 July 2000, see http://www.salon.com/2000/07/10/marriage_10/ as at 1 December 2011

20. The “Equal Love” campaign, see http://equallove.org.uk/ as at 8 December 2011

21. Pinknews.co.uk, 20 September 2010, see http://www.pinknews.co.uk/2010/09/20/stonewall-update/ as at 8 December 2011