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.

Comments
The Equality & Human Rights Commission ("The Commission") believes that civil partnerships should be able to be registered through religious ceremonies. The Commission would however be opposed to any compulsion on religious groups to register such partnerships. Subject to comments below we find the Scottish Governments approach to be reasonable and proportionate. However, where celebrants and religious bodies have no objection to registering civil partnerships, we see no reason to prevent such ceremonies.

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.

Comments
The Commission's position is that, as far as possible, the proposals should provide a "fit" with current Scottish practice. We therefore support the proposals being made in Scotland which would enable same sex couples to have a religious ceremony if the particular religious body provides for this. We do not consider that the proposals which have been consulted upon previously in England & Wales are in keeping with thinking in Scotland and note that, following recent commitments made by the Prime Minister, it is possible that the position as set out in the recent England & Wales consultation may be subject to change.

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

Comments

The Commission agrees with the proposal to allow religious celebrants to register civil partnerships in religious premises subject to the willingness of the faith for this to occur. Should all parties involved in the request agree that a registration of a civil partnership by a religious celebrant on religious premises is desirable we see no good reason why this should be prevented by law.

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?

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<thead>
<tr>
<th>Yes</th>
<th>X</th>
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<td>No</td>
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Please give reasons for your answer

Comments

As with our answer to question 3 above should all parties involved in the request agree that a registration of a civil partnership by a religious celebrant in non religious premises is desirable we see no good reason why this should be prevented by law. This would enable same sex couples the same flexibility in choosing the venue for their ceremony as opposite sex couples currently enjoy.

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Question 5 (Paragraph 2.25)

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

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<tr>
<th>Yes</th>
<th>X</th>
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<td>No</td>
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Please give reasons for your answer

Comments

Religious beliefs are held by many and should be respected. We do not believe that it would be desirable or fair to compel religious bodies to register civil partnerships where they believe this would be incompatible with their faith. This "non compulsion" principle is central to the workability of these proposals and provides religious bodies with the necessary freedom to act compatibly with their beliefs.
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

Comments

The issue raised by this question is primarily one for religious bodies and their celebrants. The Commission feels that the Government needs to further discuss the implications of this question with those bodies.

Question 7 (Paragraphs 2.28 to 2.30)

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

Yes □
No □
Don’t know ❌

Please give reasons for your answer

Comments

Please refer to our answer to Q6
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.

Comments

Option 2, setting up a new procedure, would appear to offer the greatest clarity in relation to who wishes or does not wish to solemnise same sex marriage.

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
Same sex marriage

Question 10  (Paragraphs 3.11 and 3.12)
Do you agree that the law in Scotland should be changed to allow same sex marriage?

Yes ☒
No    ☐
Don't know ☐

Please give reasons for your answer

Comments

The Commission is in favour of legislation to allow same sex marriage in Scotland. In principle we believe that to achieve equality extending the right to marriage to same sex couples is desirable. Subject to the considerations set out below with regard to the position of celebrants, and in keeping with the principle of non compulsion, we agree that same sex marriage should be permitted in Scotland. Our extended reasons for this are attached in our covering letter.

Question 11  (Paragraph 3.13)
Do you agree that religious bodies and celebrants should not be required to solemnise same sex marriage?

Yes ☒
No    ☐
Don't know ☐

Please give reasons for your answer

Comments

The Commission's position is that religious bodies and celebrants should not be required to solemnise same sex marriage, in the same way that individual religious celebrants should not be required to register civil partnerships. We do not believe that it would be appropriate for the Government to require religious bodies or celebrants of faiths to be
compelled to act in ways which they view as inconsistent with their faith.

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

Comments

See Q 13 below.

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

Comments
The Commission’s position is that we wish to see the status of both civil partnership and marriage equalised in Scottish law. The introduction of same sex civil marriage only would create essential differences between same sex and opposite sex marriage when it is clear that there are a number of religious bodies in Scotland, and celebrants of these bodies, who wish to recognise and conduct same sex religious marriage. In such circumstances the Commission believes that those religious bodies who wish to perform same sex religious marriages should not be prevented from doing so by the law.

Question 14 (Paragraphs 3.23 and 3.24)
Do you agree that religious bodies should not be required to solemnise same sex marriage?

Yes ☒
No ☐
Don't know ☐

Please give reasons for your answer

Comments

The Commission’s view is that the beliefs of religious bodies in this area must be respected, be they opposed to or in agreement with same sex marriage. It would not be appropriate to attempt to compel religious bodies who have faith-based objections to same sex marriages to solemnise same sex marriages. We agree that the principle of non compulsion for both bodies and celebrants should be respected.
Question 15 (Paragraphs 3.25 and 3.26)

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?

Yes  
No   
Don't know  

Please give reasons for your answer

Comments

Please refer to our answer to Q6.

Question 16 (Paragraphs 3.27 and 3.28)

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

Yes  
No   
Don't know  

Please give reasons for your answer

Comments

Please refer to our answer to Q6.

Question 17  (Paragraphs 3.29 to 3.33)
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?

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.

Comments
Option 2, setting up a new procedure, would appear to offer the greatest clarity in relation to who wishes or does not wish to solemnise same sex marriage.

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

Comments
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

Comments
There are wide ranging views across Scottish society on marriage and civil partnerships including those who object to the institution of marriage per se and would prefer to enter into a civil partnership. Such views are not restricted to same sex couples and there are mixed sex couples who might also wish to enter into civil partnerships.

This consultation provides an opportunity to review and re-evaluate how society's attitudes to civil partnership and marriage may have changed since the introduction of civil partnership.

Whilst we agree that retaining civil partnerships, or indeed extending civil partnership to mixed sex couples, may lead to greater complexity we do not believe that this complexity is sufficient to prevent such a move were it to be desirable. The Commission is in favour of choice being extended to all on the basis of their aspirations in this regard. Should this consultation indicate a desire amongst Scottish people in same sex or mixed sex couples to retain, or indeed extend, the current flexibility, we feel that the Scottish Government should respond positively to such demand.

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).

Comments

At present, if a married transgender person wishes to receive a Gender Recognition Certificate (GRC), the Gender Recognition Act requires that they must first divorce their partner. This is because, at present, people of the same sex cannot lawfully marry.

If same sex marriage is introduced, this requirement to divorce could be removed, allowing a mixed sex marriage to continue as a same sex marriage. However, some such marriages could have been solemnised by a religious body whose faith prohibits same sex marriage. The Government will have to consider carefully how such marriages should be dealt with in law.