The King's Fellowship is an independent church of about 100 families and single people. It is governed by a body of 7 elders, appointed in accordance with the Fellowship's Constitution. The eldership includes a full-time pastor, who is licensed to conduct marriages (under Section 9 of the Marriage Act (Scotland) 1977). The following submission is the unanimous view of the eldership.

Elders of The King's Fellowship

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     X□
Don't know □

Please give reasons for your answer.

Comments
1. It is unnecessary. As acknowledged in the Consultation Document, once the legal formalities are completed elsewhere there is nothing at present to prevent same sex couples having a religious service mirroring, if they so wish, all aspects of the marriage service, if they can find a religious celebrant willing to conduct it. Their position is no different in this respect from that of many heterosexual members of some independent, non-denominational churches, where the pastor is not authorised to conduct marriages. The issue therefore is purely a matter of perceived status, not of "extending religious freedom" as falsely argued in the Consultation Document. Civil partnership is already, in all essential legal respects, the exact equivalent of civil marriage.

2. The existing prohibition against religious ceremonies was intended to help draw a clear distinction between civil partnership and marriage. It was approved by Parliament on that understanding. We believe it is important to
preserve this distinction. Civil partnership should remain a civil contract, registered by civil registrars.

3. There would be serious practical difficulties in maintaining the voluntary basis of the proposed change. See our comments on same-sex marriage for a fuller discussion of this point.

4. Changing the law on civil partnerships will satisfy no one and can only be seen as a step towards legalising same-sex marriage.

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.

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
No because we do not support any change in the 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?

Yes  □
No   ☑ □
Don't know □

Please give reasons for your answer

Comments
No because we do not support any change in the law.

Question 5  (Paragraph 2.25)

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

Yes   ☑ □
No    □ □
Don't know □

Please give reasons for your answer

Comments
We think it is remarkable that the Scottish Government should even have asked this question.
The concept of civil partnership between people of the same sex is completely alien to the orthodox beliefs and doctrine of at least three major religions, Christianity, Judaism and Islam. To require religious bodies to register such partnerships would be a flagrant contravention of ECHR Article 9.

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
1. It is a matter of faithfulness to the beliefs and doctrine of the “religious
body" to which the celebrant belongs. It is also a matter of accountability to
the people of whom he or she is the minister as well as to the "religious
body" under whom he or she is ordained to serve.

2. Paragraph 2.27 puts forward a false view of "individual religious
freedom". ECHR Article 9 affirms the absolute right of the individual to
change his or her religion. It does not imply any right for a person who has
rejected a major tenet of a religion to continue to serve in any capacity as a
minister of that religion.

3. The question of the beliefs and teaching of the religious body versus the
religious freedom of the individual must be a matter for the religious bodies
themselves to determine. This is not a matter in which civil law should
interfere.

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
If a Christian religious body (we can speak only for these) decides to
register civil partnerships, this would be a major departure from two
thousand years of Biblically-based doctrine and tradition which not only
does not recognise same sex unions, but also regards them as
unacceptable to God. It is probable therefore, that should a church
determine on this radical rejection of orthodox doctrine, there will be some
ministers who find this irreconcilable with the faith and practices which they
had vowed at their ordination to uphold. The position here is exactly the
opposite of that considered in Question 6; here it is the "religious body" itself
that would have departed from orthodox practice.

Any change in the law, voluntary or not, is likely therefore to create a major
crisis of conscience for some people.
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  X□

If you have another option, please describe it.

Comments
Option 2 at first sight seems the better, in that appears to offer to treat the registration of civil partnerships as a service separate from that of the registration of marriages. On that understanding there ought to be no conflict with the Equality Act 2010, which outlaws discrimination in the provision of goods and services but does not require service providers to provide a particular service.

However though this Option might be successful in protecting the rights of religious bodies that did not want to register civil partnerships, it might be less successful in protecting the rights of non-participating individual celebrants in religious bodies that did. Practical considerations are likely to mean that the "entirely voluntary" principle would need to be compromised to satisfy demand in a non-discriminatory manner. See our answer to Question 17 for a full development of this point.

We conclude that the only option that will "ensure that religious bodies and celebrants do not have to register civil partnerships against their will" is to leave the law as it stands.

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  X□

Don't know  □

Please give reasons for your answer

Comments  Current legislative provision in fact ensures this.
**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?

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Please give reasons for your answer

**Comments**

1. The suggestion implicit in Paragraphs 3.11 – 3.13 is that the view of marriage as "a unique bond between a man and a woman" is a minority "religious belief", confined to "some religious bodies" and their adherents. This is a gross misrepresentation of the facts.

In fact it is what the overwhelming majority of people throughout the history of western civilisation have understood marriage to mean. This view continues to be held today, not only by people of religious faith but also by a great many people of no strong religious conviction. This is because it is a view based on reason and a common-sense recognition of the natural order of things, quite apart from the special respect considered by Christians and those of other faiths to be due to it as an institution ordained by God. It has been universally regarded as, and by recent research demonstrated to be, the proper and securest basis for the foundation of a family. It is a view acknowledged in the European Convention on Human Rights and in the Universal Declaration of Human Rights.

2. Minority rights deserve to be respected, and much of the recent legislation aimed at removing prejudice against homosexual people has been laudable. But a "commitment to equality" cannot extend to treating as equal things that are manifestly not equal. Only by ignoring the complementarity of the sexes, the anatomical, biological and psychological differences between men and women and the necessary part these play in a marriage and in the procreation and nurture of children, can one make any case for treating marriage and same sex unions under the same law.

To respond to the demands of a small minority by a radical change to a law concerning an institution which has for millennia been one of the foundations of society throughout the world, would be unreasonable and disproportionate regardless of any question of religious freedom.

3. If once the exclusive basis of marriage is compromised, there is no reason why further "widening" of its scope should not follow. If its definition is extended to include couples of the same sex, there is no ground in pure reason why it should not be further extended to embrace Muslim polygamy and to avoid discriminating against bisexual people – another sexual
orientation already recognised in law - by denying them the right to have both a male and a female marriage partner if they so wish.

4. The Government’s double aim of introducing same sex marriages while at the same time protecting religious celebrants from a requirement to solemnise them is likely to be impossible to achieve under existing legislation. Even if the legislation proves, or is amended, to allow this, the voluntary nature of religious involvement in registering same sex marriages is likely to become eroded over time, and lead to coercion and/or discrimination in recruitment. See our answer to Question 17 for full treatment of this point.

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

Yes       X
No         
Don’t know 

Please give reasons for your answer

Comments
We think it is remarkable that the Scottish Government should even have asked this question.
The concept of marriage between people of the same sex is completely alien to the orthodox beliefs and doctrine of at least three major religions, Christianity, Judaism and Islam. Should the law decide to allow such unions, to require religious bodies to register them would be a flagrant contravention of ECHR Article 9.

Question 12  (Paragraphs 3.14 to 3.18)
Do you agree with the introduction of same-sex civil marriage only?

Yes       
No         X
Don’t know 

Please give reasons for your answer

Comments
No, because we do not support the introduction of any change in the marriage laws which departs from the universally recognised definition of marriage as being between a man and a woman. A marriage remains a marriage, regardless of whether it is contracted by a civil or a religious
ceremony.

We note however that this question would also have to be answered "No" by those who answer "Yes" to Question 13, thus rendering a "No" answer susceptible of two completely contradictory interpretations. We trust the Scottish Government has noted the potential for statistical distortion inherent in this ambiguity and will take steps to avoid any misrepresentation of results arising from this.

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
No, for the reasons already stated in our answers to Questions 10, 11 and 12.

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
Yes, for reasons already given in our answer to Question 11
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
Yes, for reasons already given in our answer to Question 6, except that for "civil partnership" read "same sex marriage".

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
Yes, for reasons already given in our answer to Question 7, except that for "civil partnership" read "same sex marriage"
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
1. The only way to "ensure that religious bodies and celebrants do not have to solemnise same sex marriage against their will", is to preserve the present distinction in law between marriage and same-sex unions. If the law is changed to allow same sex marriage, we do not believe it will lie, ultimately, within the power of the Scottish Government to protect religious bodies who do not wish to solemnise them, unless, that is, they give up the right to solemnise marriages altogether.

2. Article 12 of the European Convention on Human Rights provides that: "Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing this right." We question whether it would be legal for the Scottish Government to redefine marriage so that men might marry men and women might marry women. But given such a change in the law, it seems highly improbable that either Option 1 or Option 2 would be found compliant with ECHR Article 14, which requires that: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination..." (with respect to any of the protected characteristics).

The argument put forward in our comments on Option 2 in the corresponding question (8) on civil partnerships does not apply here. As long as civil partnership is recognised as something distinct from marriage, it cannot be "discriminatory" to offer to register one but not the other. But if marriage between persons of the same sex becomes legal, the law as it stands must find it "discriminatory" to distinguish between same sex and opposite sex marriages. Either something is a marriage or it is not. Any attempt to create separate categories of celebrant for same sex and opposite sex marriage would be by definition discriminatory on the grounds of sexual orientation, whether this was done by allowing individual celebrants to opt out of solemnising same sex marriages (Option 1) or by requiring religious bodies to opt in (Option 2).

Invoking Article 9 in support of the case for allowing such discrimination is by no means certain to be successful. European and UK case law has consistently set aside Article 9 rights wherever these have come into conflict
with the right of non-discrimination on the grounds of sexual orientation. In recent judgements, Article 9 has failed to prevent the closure of Catholic adoption agencies which no homosexual couple would ever need or want to use, and has failed to prevent the dismissal of Lillian Ladele, for her conscientious objection to being designated a civil partnership registrar, although it was acknowledged that no detriment to the service was, or need have been, caused by accommodating her desire not to be so designated. The latter case, which is currently before the European Court of Human Rights, is particularly relevant. The Scottish Government will no doubt be aware of the recent submission to the Court by the Equality Commission for England and Wales supporting the ruling of the UK Employment Appeal Tribunal and the English Court of Appeal, which effectively renders Article 9 impotent to uphold religious and conscientious freedom wherever this involves "discrimination", even if only symbolically, against homosexual people. It now seems a foregone conclusion that the Court will do likewise.

There are, of course, significant differences between the case of a public service employee and that of a religious celebrant. The key fact however is that the religious celebrant, in registering a marriage, is undeniably performing a public, not a religious, function. This would seem to call into question any ruling by the Scottish Government that it was not to be regarded as "discriminatory" for a religious celebrant, authorised by law to perform the public function of registering marriages, to refuse to conduct them if they were between couples of the same sex. In this connection we note with concern the finding of the English Appeal Court in the Ladelle case that that Ms Ladele's "view of marriage" "was not a core part of her religion". We have no confidence that such a presumptuous intrusion by a civil court into matters of religious belief could not be repeated in a Scottish or European court.

3. Paragraph 3.28 states "If an individual celebrant should decide not to solemnise same sex marriage.....the religious body would have to ask (italics ours) another celebrant of the body to carry out the service." This begs the question of whether the religious body would actually be obliged to provide another celebrant in such circumstances. If so, the "entirely voluntary" principle is at once compromised. If not, this could result in considerable inconvenience to a same sex couple wishing to "marry", and consequent litigation against the "religious body".

There seems little doubt that a church that wanted to accept same-sex marriage would do well, if it did not wish to invite opprobium, to make sure that it had sufficient willing celebrants in all areas to provide the service. But to maintain this position it would sooner or later be obliged to make willingness to conduct same-sex marriage a condition of ordination for all candidates or even for admission to its theological colleges. The idea that the principle of voluntary involvement could be sustained is a fiction, both on account of the legal challenges that would result and on account of the practical need to provide the service in a fair manner. The suggestion (paragraph 4.11) that the Government's proposals would increase religious freedom is disingenuous as well as absurd.
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  Current marriage law ensures this.

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

Question 20  (Paragraph 4.20)

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 4.15).
Comments

1. A decision to legalise same sex marriage would do nothing to heal our fragile and fragmented society. It would deflect government and public attention from the real issues such as support for stable and committed relationships between men and women in marriage, and thus for stable, two parent families where father and mother can play their equally important but complementary part in bringing up their children in a secure, loving, safe and properly disciplined environment.

It would give further encouragement to those who vilify as "homophobic" churches and people who neither hate nor fear homosexuals, but who are unable to reconcile their practices with what they believe about God's purposes for sex. It would thus lead to an increase in litigation, and consequent waste of public and private money which could have been better spent.

Please send your response with the completed Respondent Information Form to:
familylaw@scotlaw.gsi.gov.uk or

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