

THE REGISTRATION OF CIVIL PARTNERSHIPS SAME SEX MARRIAGE

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

Civil partnerships are civil contracts distinct from religious ceremonies. They were established to provide almost identical rights to parties of those contracts as to spouses. The warnings that we gave at the time that such partnerships would be exploited to attempt to re-order the understanding of marriage can now be seen to be accurate in the publication of this consultation paper. The attempts to have civil partnerships 'celebrated' is another step in the legal attempts to equate same-sex relationships with marriage and should not be supported.

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

See response to question 1.

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

See response to question 1.

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

See response to question 1.

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

Religious freedom is protected by national and international law and no religious body can be coerced to act contrary to its beliefs. It is not sustainable to justify interference in the right to religious freedom, as outlined in Article 9(2) of the European Convention on Human Rights¹, on

¹ Article 9 (2) states: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the

the grounds of providing civil partnership registration in society. Religious bodies should therefore not be required to register civil partnerships.

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

Religious bodies are entitled to preserve the integrity of their institutions and ensure that celebrants within their body do not contravene the values and policies of the organisation. Unfortunately there has been a considerable effort to undermine the beliefs of members of faith communities, through a variety of means, to encourage dissent from the teachings of their faith in relation to sexual morality. Sadly these attacks have been presented as human rights; yet at times it has been made clear by some campaigners that they are prepared to undermine the rights of others². Such efforts do in fact raise concerns under Article 17 of the European Convention of Human Rights which prohibits the use of convention rights to undermine the rights of others³. Those who wish to act contrary to the policies of their Church are perfectly free to leave and find other organisations which are supportive of their beliefs and practices.

Question 7 (Paragraphs 2.28 to 2.30)

interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.”

² “Should we be aiming to close down all the churches that preach against LGBT or against LGBT community?”, Brave New World, LGBT Equality In A Changing Scotland, Report From The Conference, 20th May 2006. The Arches, Glasgow

“Right now, faiths shouldn’t be forced to hold civil partnerships, although in ten or 20 years, that may change” , Ben Summerskill, Chief Executive of Stonewall, March 2010, quoted in <http://www.pinknews.co.uk/2010/03/04/bishops-say-clergy-will-be-sued-for-refusing-civil-partnerships/>

³ Article 17 of the ECHR states “Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction on any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

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

Any requirements to force celebrants within a Church or faith group to contravene the values of their faith would be an assault on conscience. Conscience is the highest order of personal responsibility and duty⁴. It must be obeyed and no earthly authority has the right to force a person to act contrary to his conscience; save in circumstances where it is **necessary** and **just** to do so for the sake of public order and safety.

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

The state has the duty to uphold the family which is based on the union of a man and woman (c.f. ECHR Art 12; UDHR Article 16)⁵. Society, religious

⁴ "Deep within his conscience man discovers a law which he has not laid upon himself but which he must obey. Its voice, ever calling him to love and to do what is good and to avoid evil, sounds in his heart at the right moment. . . . For man has in his heart a law inscribed by God. . . . His conscience is man's most secret core and his sanctuary. There he is alone with God whose voice echoes in his depths." Pastoral Constitution on the Church in the Modern World — *Gaudium et Spes* Promulgated by Pope Paul VI. [Vatican City]: 1965. Paragraph 16,

⁵ UDHR Article 16 states "1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

bodies and individual celebrants will be protected if the government refrains from pursuing the proposals raised in this consultation paper.

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

Comments

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 concept of "same sex marriage" is illogical. Marriage is the union of a man and woman⁶ and it is not possible for the state to re-define this relationship. Such attempts are unjust, unwarranted and contrary to right reason. Creating publicly recognised institutions which undermine the concept and importance of marriage and therefore breaches sub-paragraph 3 of Article 16 of the Universal Declaration of Human Rights which recognises that the family is entitled to state protection.

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

See answer to question 10

Question 12 (Paragraphs 3.14 to 3.18)

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

Yes

⁶ C.f. The Church Family in the Modern World, *Familiaris Consortio*. John Paul II, November 22, 1981 paragraph 14

No
Don't know

Please give reasons for your answer

Comments

Neither religious nor civil same-sex unions should be condoned as they are both contrary to right reason and the common good. They diminish the proper understanding of marriage and represent a misrepresentation of family relationships which are built on the complementarity of the sexes and the natural fecundity of that relationship. Same sex relationships in no way can be proposed as representing a marital union.

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

See the answer to Q12

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

See answer to question 5 which provide reasons also applicable to this question.

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

See answer to question 6 which provide reasons also applicable to this question.

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

See answer to question 7 which provide reasons also applicable to this question.

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

See answer to question 18

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

There has been a determined and progressive attack on the family and on religious freedom under the guise of combating discrimination on the grounds of sexual orientation. Sadly the government has participated in these attacks by gradually redefining sexual relationships in our society, despite assurances to the contrary⁷, which it started to do with the repeal of Section 2A to the Local Government Act 1986⁸. Warnings against this and

⁷ For example “The bill also provides for the repeal of section 2A. That repeal is not, and never has been, about the promotion of homosexuality in our schools. It is not about political correctness or, even less, about marriage. It is about building a tolerant Scotland.” Wendy Alexander, Minister for Communities in Scottish Parliament debate, Wednesday 21 June 2000.

“We believe that repeal of section 2a us about creating a more tolerant Scotland. We believe it will make it easier for teachers and schools to deal with sensitive issues that arise. But it definitely will not lead to homosexuality being promoted in our schools”

Sam Galbraith, Minister for Children & Education, in letter to all school boards and head teachers, January 2000

⁸ 2A “Prohibition on promoting homosexuality by teaching or by publishing material.

(1)A local authority shall not—

(a)intentionally promote homosexuality or publish material with the intention of promoting homosexuality;

(b)promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship.

(2)Nothing in subsection (1) above shall be taken to prohibit the doing of anything for the purpose of treating or preventing the spread of disease.

(3)In any proceedings in connection with the application of this section a court shall draw such inferences as to the intention of the local authority as may reasonably be drawn from the evidence before it.

(4)In subsection (1)(b) above “maintained school” means,—

(a)in England and Wales, a county school, voluntary school, nursery school or special school, within the meaning of the Education Act 1944; and.

massive opposition from the public have been shown to have been prescient. The law has since been used to teach (or more properly, indoctrinate) an understanding of homosexual relationships which is damaging for those individuals with same-sex attraction,⁹ as it is for society as a whole which suffers gravely from the fragmentation of the family arising from downgrading the importance of marriage. It is worth recalling the wording of 'Section 2a' which proscribed the teaching of "the acceptability of homosexuality as a pretended family relationship".

In slightly more than a decade the concerns that led to the introduction of such a law have now been turned on their head such that campaigners are now freely, aggressively and intolerantly labelling as bigots those who dare to uphold the proper understanding of human sexuality. The proper meaning and purpose of human sexuality is God given, but can be understood by human reason. Simple biology easily distinguishes the proper purpose of the sexual faculty and sociological evidence bears witness to the importance of the family built on marriage.¹⁰ The psychological genesis¹¹ of same sex attraction has been resolutely ignored in all government actions relating to this issue over the last decade and more¹². The Church upholds the dignity of all persons at all times and gives guidance and support, in her teachings, to all people no matter their temptations or the mistakes that a person may make in their choices; we cannot however remain silent in the face of the grave error that is being propagated. We assert once again the importance of the government in holding a proper understanding of the human person and of the necessity of protecting the vital cell of society which is built on marriage.¹³ In order that

(b)in Scotland, a public school, nursery school or special school, within the meaning of the Education (Scotland) Act 1980.”.

⁹ For example increased mental health problems; c.f. Theo Sandfort, 'Sexual Orientation and Mental and Physical Health Status: Findings From a Dutch Population Survey' *American Journal of Public Health*, 96, 6, (2006), 1119

Also the grave impact on life expectancy; c.f. P. Cameron and K. Cameron, 'Gay obituaries closely track officially reported deaths from AIDS', *Psychological Reports* 96 (2005) 693 (abstract available at URL <http://www.ncbi.nlm.nih.gov/pubmed/16050624> last accessed 22 September 2011); also R.S. Hogg et al, 'Modelling the impact of HIV disease on mortality in gay and bisexual men' (Abstract available at URL <http://ije.oxfordjournals.org/content/26/3/657.abstract> last accessed 22 September 2011).

¹⁰ Children are more likely to do have better outcomes in a range of areas including physical and mental health, education, crime, poverty, victim of violence. C.f. 'Does Marriage Matter?', Civitas (available at URL <http://www.civitas.org.uk/pdf/cs31.pdf> last accessed 23 September 2011) ; also c.f. 'Why Marriage Matters: Twenty-One Conclusions from the Social Sciences', New York: Institute for American Values, 2002.

¹¹ C.f. Philip Sutton, 'Who Am I? Psychological Issues in Gender Identity and Same-Sex Attraction' in Helen Watt(Ed), 'Fertility & Gender: Issues in Reproduction and Sexual Ethics', (Oxford – Anscombe Bioethics Centre, 2011)

¹² This is not just a problem in Scotland and the United Kingdom; c.f. Jeffrey Keefe, 'Outreach to Homosexual Persons: The Understanding Heart' (Available at URL http://couragerc.net/Courage_Home_Page/Understanding_Heart.pdf last accessed 22 September 2011).

¹³ C.f. The Church Family in the Modern World, *Familiaris Consortio*. John Paul II, November 22, 1981 paragraph 42

the family is not undermined by the State “the Church openly and strongly defends the rights of the family against the intolerable usurpations of society and the State.”¹⁴

We have witnessed the intolerance that has arisen in regard to those who refuse to condone homosexual practice and point out the clear path that these proposals present towards attempts to compel faith organisations and individual persons to comply with policies which are contrary to their deepest values. We have already experienced this in the United Kingdom in relation to adoption and note again the comments of a leading homosexual activist: “Right now, faiths shouldn’t be forced to hold civil partnerships, although in ten or 20 years, that may change”. We note the tone of menace in the comments of other activists who are attempting to undermine legitimate debate by equating the recognition of difference between homosexual and heterosexual activity with racist views¹⁵. We might as easily argue that those who disagree with Catholic teaching on the issue are thereby exhibiting bigotry.

The government should take in to account that unjust stigmatisation of people with same-sex attraction, which has been a social phenomenon, has hurt many people producing a reaction of anger which can motivate the intemperate attacks on those who refuse to submit to “pro-gay” ideology. The government needs to perform a mediating role which can objectively assess the concerns of society and not simply submit to the demands of lobby groups with grievances. We bring to your attention the fact that much support work is being done by organisations such as *Courage*¹⁶ and *Encourage* to give appropriate support to persons with same-sex attraction.

In the context outlined it is not safe to rule out the need for legislative provisions to safeguard the rights of religious bodies.

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

¹⁴ Ibid. paragraph 46

¹⁵ For example “Just this month, Brian Souter received a knighthood despite being the prime mover behind the equally homophobic 'Keep The Clause' campaign a decade ago. An overt racist would be given neither kind of honour - in fact the merest hint of racism or sectarian behaviour is regularly enough for someone to lose their job. What is unique about this particular prejudice that means so many in authority fail to take it seriously? It's time for Scotland to grow up, and to stand up to all forms of bigotry and prejudice alike.” Patrick Harvey MSP, see URL <http://www.scottishgreens.org.uk/news/show/6580/president-of-homophobic-university-to-address-holyrood> last accessed 22 September 2011.

¹⁶ <http://couragerc.net/>

Please give reasons for your answer

Comments

No comment

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

The answers above cover the comments we wish to make at this point.