

REPORT TO: Cabinet

MEETING DATE: 12 March 2013

BY: Executive Director (Support Services)

SUBJECT: Consultation on Marriage and Civil Partnership (Scotland) Bill

1 PURPOSE

- 1.1 The purpose of the report is for the Cabinet to approve the East Lothian Council response to the Consultation Document issued by the Scottish Government on their proposed Marriage and Civil Partnership (Scotland) Bill.

2 RECOMMENDATIONS

- 2.1 To approve the comments attached on the Marriage and Civil Partnership (Scotland) Bill and to submit them by 20 March 2013.

3 BACKGROUND

- 3.1 In the past decade, there have been a number of changes to Marriage legislation which has given more choice to couples who wish to get married. There has also been the introduction of Civil Partnership legislation in Scotland which has allowed couples of the same sex to enter into Civil Partnerships.
- 3.2 The Marriage (Scotland) Act 2002 allowed registration staff to conduct civil marriages outwith registration offices for the first time. Before this legislation, couples who wished to have a civil marriage ceremony could only get married in a registration office.
- 3.3 The Marriage (Approval of Places) (Scotland) Regulations 2002 determined the licensing of premises outwith where civil marriages could be conducted.
- 3.4 There are 12 venues in East Lothian which have period licenses (3 years) to hold civil marriage/civil partnership ceremonies. One-off

licences are granted to couples who want to have their civil marriages or civil partnerships in a venue which does not hold a period licence – this may be a private house.

- 3.5 Religious organisations are not required to have a licensing process.
- 3.6 The Civil Partnership Act 2004 came into force on 5 December 2005. A paper was approved at Cabinet (13.9.2005) advising Cabinet of the new law and that people of the same sex could enter into a Civil Partnership from 21 December 2005. The Cabinet also approved the offering of ceremonies to same sex couples. There was only a statutory duty to offer civil partnership registration.
- 3.7 The Act identified that there would be civil partnership registration and this would be undertaken by local authority registration staff only and could not take place in religious premises. There have only been 2 occasions within East Lothian Council area where same sex couples have had a civil partnership registration only. All other couples have gone through a ceremony just as opposite sex couples do.
- 3.8 Currently, marriage is only open to opposite sex couples and civil partnership only open to same sex couples.
- 3.9 The Scottish Government consulted on same sex marriage and the registration of civil partnerships at the end of 2011. It received around 77,500 responses (this included all forms of responses and signatures to petitions).
- 3.10 Following that consultation, the Scottish Government has decided to introduce same sex marriage and religious registration of civil partnership. The Scottish Government is also committed to providing protections for some in society who may have concerns about same sex marriage.
- 3.11 In summary, amongst the protections are:
 - Religious and belief bodies who wish to solemnise same sex marriage or register civil partnerships will have to opt in to do so
 - Religious and belief celebrants will only be able to solemnise same sex marriage or register civil partnership if their body has decided to opt in
 - If a religious or belief body decides to opt in, there will be no obligation on individual celebrants to solemnise same sex marriage or register civil partnerships
 - The draft Bill has a provision making it clear that the introduction of same sex marriage does not affect existing rights under the European Convention of Human Rights and elsewhere to freedom of thought, conscience, religion and expression

- The Scottish Government will retain the existing rights of parents to opt their children out of programmes of sex education
- The Scottish Government intends to update Education Circular 2/2001 on the conduct of sex education in schools. This update will take account of the introduction of same sex marriage. The Government will consult stakeholders on changes to the Circular.

3.13 The Scottish Government has decided to introduce this Bill for the following reasons:

- they feel that the introduction of same sex marriage and the religious registration of civil partnership will further equality for LGBT people.
- LGBT people of faith would welcome the introduction of religious ceremonies at which to register their civil partnership or marry
- A number of religious bodies would wish to carry out such ceremonies.

3.14 A meeting was called to discuss the proposed response from East Lothian Council and representatives from the Registration service, Education, Law and Licensing, Building Control and Equalities were invited. The proposed response from East Lothian Council is attached as an Appendix.

3.15 In summary, the Council has made comment on the following proposals:

- opposite sex and same sex civil marriages should be able to take place anywhere agreed between the registrar and the couple other than religious premises (this will mean that there is no longer a requirement to licence premises as is currently the case) but we would wish to have the option to charge a fee for premises which do not hold a license under the Civic Govt (Scotland) legislation or the Licensing Scotland Act 2005 as these premises will not have had any kind of checks by the Fire and Rescue Service /Police/Building Control/registration staff (Q.2)
- that belief ceremonies should be identified as a third type of ceremony alongside religious and civil ceremonies but that all authorised bodies should be audited in order to maintain the integrity and standard of ceremony (currently all belief ceremonies are categorised as religious ceremonies)(Q.3)
- that there should be tests that religious or belief bodies must meet before its celebrants can be authorised to solemnise marriage or register civil partnerships (the civil registration service is examined by the National Records Office of Scotland on an annual basis). (Q.5)
- that civil registration staff should not be allowed to opt out of solemnising a same sex marriage as it is part of the duties of their

post and discussion took place on this matter prior to the introduction of the Civil Partnership Act 2004 (Q.8)

- that we agree to the proposals in relation to changing civil partnerships to a marriage (Q. 17)

4 POLICY IMPLICATIONS

- 4.1 The new Bill is to be introduced during 2013 and it will mean that there will no longer be a requirement to license premises to hold civil marriages.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 An equalities impact assessment has been undertaken by the Scottish Government and comment has been requested as part of the Consultation process.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – There will be a loss of income following the repeal of legislation to license premises for civil marriages but this will be offset by the reduction on time of police/fire service/building control and registration staff checking premises.

6.2 Personnel - none

6.3 Other - none

7 BACKGROUND PAPERS

7.1 Marriage (Scotland) Act 2002

7.2 Marriage (Approval of Places) (Scotland) Regulations 2002

7.3 Civil Partnership Act 2002

7.4 Cabinet report – Civil Partnership Act – 13.9.2005

7.5 Marriage and Civil Partnership (Scotland) Bill – Consultation paper 2012

AUTHOR'S NAME	Eileen Morrison
DESIGNATION	Customer Services Manager
CONTACT INFO	Ext. 7211
DATE	27.2.13

ANNEX I: QUESTIONNAIRE RESPONDENT INFORMATION FORM

Please note: this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name (if applicable)

East Lothian Council

Title: Mr Ms Mrs Miss Dr

Surname

Forename

2. Contact details

Postcode

Email

3. Which country are you resident in? (please select one of the options below)

Scotland

Rest of the UK

Rest of the World

4. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

The Scottish Government generally seeks to publish responses to a consultation, in summary and, where possible, in detail. We would like your permission to publish:

Please tick ONE of the following boxes

Your name along with your response

or

Just your response (anonymous)

or

Please do not publish my response at all

The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on this site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

Are you content for Scottish Government to contact you again in relation to this consultation?

Please tick as appropriate Yes No

CONSULTATION QUESTIONS

These consultation questions seek views on the detail of the legislation that will: introduce same sex marriage; allow civil partnerships to be registered through religious or belief ceremonies; and make other changes to marriage law. Further information on the detail of the legislation is available below each question (see 'more information') and in the consultation paper.

There is no obligation to answer all of the questions – you may answer as many or as few as you like.

Impact assessments

Question 1 (Paragraphs 1.14 to 1.17 and Annexes J and K).

Do you have any comments on the impact assessments prepared in relation to the proposed legislation?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

No comments

General changes to marriage law

Question 2 (Paragraphs 2.02 to 2.04)

Do you have any comments on allowing opposite sex and same sex civil marriage ceremonies to take place anywhere agreed between the registrar and the couple, other than religious premises?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Where a premises or business does not hold a license under the Civic Government (Scotland) legislation or the Licensing Scotland Act 2005 or the Licensing (Scotland) Act 1976, we would wish to have the authority to apply a charge to ensure that the premises/business concerned is fit for the purpose of

receiving our member of staff in the role of carrying out the ceremony and also members of the public as guests. As an employer we have a duty of care for our employees and therefore specific health and safety measures would have to be adhered to. As a Local Authority, we have a duty to ensure that buildings are suitable for public use. We would wish to levy a charge to cover the costs associated with satisfying ourselves that the premises met the previously identified criteria including health and safety guidelines eg. costs incurred staff time and travel to premises, completion of paperwork etc.

Question 3 (Paragraphs 2.05 to 2.10)

Do you have any comments on establishing belief ceremonies as a third type of ceremony, alongside religious and civil, for getting married in Scotland?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Where belief ceremonies are established as a third type of ceremony, it is our opinion that persons/groups authorised to conduct marriages should be subject to regulatory standards issued by and managed by the office for National Records Scotland. We feel that such authorised bodies should be audited in relation to the quality of service being offered to the Customer and that any ceremony offered must be seemly and dignified.

Where charges are being made for ceremonies being carried out we feel that these should be made publicly available and therefore transparent and open for scrutiny.

Question 4 (Paragraphs 2.11 to 2.14)

Do you have any comments on amending section 8 of the Marriage (Scotland) Act 1977 so that Church of Scotland deacons are authorised automatically to solemnise opposite sex marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

No comment

Question 5 (Paragraphs 2.15 to 2.21)

Do you have any comments on establishing tests that a religious or belief body must meet before its celebrants can be authorised to solemnise marriage or register civil partnership?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

We agree that tests should be introduced which a religious or belief body would have to meet before the body's celebrants could be authorised to solemnise a marriage or register a civil partnership.

We also agree with the other proposals.

In the interests of the customer we believe that consideration should be given to the national setting of charges for ceremonies and/or that charges are made publicly available and scrutinised.

Question 6 (Paragraphs 2.28 to 2.31)

Do you have any comments on abolishing the concept of marriage by cohabitation with habit and repute where a couple erroneously believed themselves to be married but it transpired after one of them died that the marriage was not valid?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

We agree with these proposals.

Same sex marriage

Question 7 (Paragraphs 3.03 to 3.07 and Annex A)

Do you have any comments on the proposals for authorising religious and belief celebrants who wish to solemnise same sex marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

No comments

Question 8 (Paragraphs 3.08 to 3.10)

Do you have any comments on opt-outs for civil registrars who do not wish to solemnise same sex marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

We do not believe that civil registrars should have the option of opting-out of solemnising same sex marriage. East Lothian Council would expect the member of staff to adhere to its policies of which would include the Council's Equalities Plan.

The registration staff were consulted about civil partnership registration prior to that becoming a duty and everyone agreed that that should be a duty of a registration member of staff and there would be no opting out. Any new member of staff takes accepts a position knowing that they will be conducting civil partnership registration and ceremonies.

Question 9 (Paragraph 3.11 and Annex B)

Do you have any comments on the proposed approach in relation to freedom of speech?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

No comment

Question 10 (Paragraphs 3.12 and 3.13 and Annex C)

Do you have any comments on the proposals in relation to education and same sex marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

East Lothian Council is committed to the principle that education should be inclusive to all pupils regardless of their sexual orientation, gender identity or their family structure. Schools have an important role in promoting equality and respect for all. Teachers should teach the school curriculum and not their personal views. We agree that no new legislation is required to provide specific protection for teachers who have concerns about same sex marriage.

Question 11 (Paragraphs 3.21 to 3.29)

Do you have any comments on the proposals on the impact of same sex marriage on legislation, the common law or on private arrangements?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

No comments but agree with proposals.

Question 12 (Paragraphs 3.21 to 3.29)

Are you aware of legislation where there is a need to make it clear that references to marriage or spouse should not extend to both opposite sex and same sex marriages or spouses?

If you are, please give details of the legislation and explain why it should not extend in this way. If not, please leave the box blank and go to the next question.

Your comments

No we are not aware of any further legislation which impacts on this proposal.

Question 13 (Paragraph 3.31 to 3.33)

Do you have any comments on the proposed approach to the law on adultery?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

No we do not have any comments with respect to this proposal.

Question 14 (Paragraphs 3.35 and 3.36)

Do you have any comments on the proposed approach to the law on permanent and incurable impotency?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

No we do not have any comments with respect to this proposal.

Question 15 (Paragraphs 3.41 to 3.47)

Do you have any comments on the proposed approach to the law on bigamy?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

No we do not have any comments with respect to this proposal.

Civil partnership

Question 16 (Paragraph 4.01 to 4.04)

Do you have any comments on the proposed approach to ensuring that religious and belief bodies and celebrants do not have to register civil partnerships?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

We have concerns that unnecessary charges may be applied at the time of registering a civil partnership by religious and belief bodies.

Question 17 (Paragraph 4.05 to 4.11)

Do you have any comments on the proposals for changing civil partnerships to a marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

We agree with the proposals in relation to changing civil partnerships to a marriage.

Transgender people

Question 18 (Paragraphs 5.01 to 5.06 and Annex D).

Do you have any comments on the detailed proposals for allowing transgender people in a relationship to stay together, if they and their partner so wish, when obtaining the full Gender Recognition Certificate?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

No comments but agree with proposal

Scottish Government
December 2012