

SCOTTISH EPISCOPAL CHURCH

College of Bishops

Guidance for Clergy and Lay Readers in the light of the Marriage and Civil Partnership (Scotland) Act 2014

The Scottish Government has announced that same-sex marriage ceremonies will be possible under the Marriage and Civil Partnership (Scotland) Act 2014 from 31 December 2014. Under the legislation, marriage is redefined so that two people can marry irrespective of their gender. The Act also allows for the possibility of civil partnerships being registered in the context of a religious ceremony. The Scottish Episcopal Church (SEC) is currently in a period of discussion regarding its understanding of same-sex relationships and pending the conclusion of that period of discussion, the College of Bishops has produced the guidance contained in this note to support and inform clergy and lay readers, as public representatives of the Church, in the exercise of their ministries and in their provision of pastoral care.

Some churches and other religious bodies have an explicit doctrinal understanding of marriage and the passing of the new legislation, therefore, potentially gives rise to a number of issues for such bodies. The doctrine of marriage of the SEC, as currently expressed in Canon 31 of the Code of Canons, is that marriage is “a physical, spiritual and mystical union of one man and one woman...”

The 2014 Act makes changes not only to enable marriage between two people of the same-sex, but also to certain procedures regarding marriage between opposite sex couples. The ability of a body such as the SEC to undertake same-sex marriages or religious civil partnerships is subject to the Church, as a denomination, “opting in” to that facility. Pending any decision on the part of the SEC to “opt in”, our clergy are not able to solemnise same-sex marriages or register religious civil partnerships.

Authority to Solemnise “Opposite Sex” Marriages

At present, clergy of the SEC are entitled to solemnise (opposite sex) marriages because, as a denomination, we are specifically prescribed by the State in statutory regulations. Under the new legislation, we expect to continue to be so prescribed, but there is a possibility that, as a condition of being so prescribed, a number of new requirements will need to be met. The Scottish Government is intending to consult on such requirements during 2015 and it is expected that a response will be made on behalf of the SEC by the provincial Faith and Order Board. Once the nature of any new conditions is clarified, clergy will be notified.

Authority to Solemnise “Same-Sex” Marriages and to Register Civil Partnerships

As mentioned above, once the 2014 Act has been brought into force, SEC clergy will not be recognised by the State to solemnise same-sex marriages. This would be possible only if the SEC decides to “opt in”, a decision which would require canonical alteration by General Synod and certain statutory procedures (essentially, the Government processing any application to opt in) would also need to be undertaken before any member of clergy could solemnise such a marriage. Without such

alterations and procedures, SEC clergy would not be legally permitted to solemnise same-sex marriages. If they conduct a ceremony in such a manner as to lead the parties concerned to believe that they are solemnising a valid marriage they would be committing a criminal offence.

For clergy to be authorised to register a religious civil partnership there would similarly require to be an “opting in” process and, again, an offence would be committed by a person who registers a civil partnership in circumstances where they are not permitted to do so.

Use of Church Buildings for Same-Sex Marriages

As mentioned, SEC clergy are not permitted to solemnise same-sex marriages or register religious civil partnerships. Given the provisions of Canon 15, clergy are also not permitted to invite someone who is an authorised celebrant (for example, of another denomination) to conduct a same-sex marriage or register a religious civil partnership in an SEC church building.

Blessing of Same-Sex Marriages/Civil Partnerships

In light of the fact that clergy are not authorised to solemnise same-sex marriages or register civil partnerships, the College of Bishops recognises that some clergy may nevertheless wish to provide some form of informal blessing or prayers for same-sex couples following a civil ceremony.

The College is of the view that any such informal blessing should be kept separate from the civil ceremony and, accordingly, should not be conducted in the same location as the ceremony. Instead, if such a blessing is to be public, it should take place in church and should be done in a context outwith the normal pattern of regular services.

The SEC has no liturgical rites for the blessing of a same-sex civil partnership or marriage and the College is of the view that it would not be appropriate to use SEC marriage liturgies for this purpose

The Church cannot give official sanction to informal blessings but, without intending to pre-empt the outcome of ongoing discussions within the Church about same-sex marriage, each Bishop would nevertheless expect to be consulted by clergy prior to the carrying out of any informal blessing of a same-sex marriage or civil partnership in his diocese.

Clergy entering into Same-Sex Marriage

The College recognises that once the 2014 Act comes into force, the possibility of entering into a same-sex marriage exists as much for clergy and lay readers as for any other member of the population. Clergy and lay readers are, of course, authorised public representatives of the SEC. At the time of their ordination and upon any subsequent appointment, clergy promise to render due obedience to the Code of Canons. Lay readers also undertake to adhere to the SEC’s doctrine and act under the direction of their Bishop.

As things stand, a clergyperson or lay reader who chooses to enter a same-sex marriage will put themselves in a position outwith the SEC’s doctrinal understanding

of marriage as expressed in Canon 31. While the SEC's doctrinal understanding remains as currently expressed, the expectation of the Bishops is that clergy and lay readers will not enter into a same-sex marriage and that anyone considering such a step will consult their diocesan Bishop.

Recruitment and Selection

Similarly, a candidate in the recruitment and selection process for ordination or lay readership who has entered, or is intending to enter, a same-sex marriage would be unable to promise obedience to the Canons. The Bishops likewise expect candidates not to enter into a same-sex marriage in the current situation and that any candidate considering such a step will consult their diocesan Bishop.

Statutory Protections

With a view to meeting concerns of those opposed in principle to same-sex marriage, the Scottish Government has included certain protections in the legislation and the UK Equality Act is also being altered. The Equality and Human Rights Commission in Scotland is working on guidance regarding the legislation and is intending to issue specific material in relation to religious or belief bodies.

Under the 2014 Act, there is no duty on a religious body to seek authorisation to solemnise same-sex marriages or register civil partnerships, nor is there any duty on a religious body to nominate persons to the Registrar General to solemnise same-sex marriages or register civil partnerships. Even where an individual is an approved religious celebrant, there is no duty on that person to solemnise same-sex marriages or register civil partnerships.

Amendments to the Equality Act will be enacted by the end of the year to provide that religious celebrants who do not wish to carry out same-sex marriages or civil partnerships will not be regarded as acting in a discriminatory way even if their own denomination has opted in. It will also cover other persons (such as an organist or choir member) who plays an integral part in the religious aspects of a marriage or civil partnership ceremony and will similarly protect any person controlling the use of religious premises who refuses to allow the premises to be used for a same-sex marriage or civil partnership.

The 2014 Act also states specifically that it does not affect the exercise of the right to freedom of thought, conscience and religion or the right to freedom of expression under the Human Rights Convention. Individuals may express positive or negative views about same-sex marriage and the Scottish Government has stated that the belief that marriage should only be between a man and a woman is "a belief worthy of respect in a democratic society".

The Lord Advocate has also published prosecutorial guidance which recognises the importance of being able to hold and impart views, including opposition to marriage of same-sex couples. Provided comments or behaviour do not incite hatred and are not intended to cause public disorder, they will not be subject to criminal prosecution. Freedom of expression is, nevertheless, subject to limits to protect the rights and freedoms of others.

Other Matters

In addition to the various matters referred to above, there are two further items to note: –

1. Time Limits (whether for opposite or same-sex marriage)

The new legislation increases the current minimum period of 14 days which must elapse between the district registrar receiving the Marriage Notice and issuing the Marriage Schedule to 28 days. This change will be introduced at some point during 2015 (the Government has not yet indicated exactly when).

2. Couples who are related by Affinity

One further matter which does not arise from the new legislation, but which clergy should be reminded of, is that Appendix 26 to the Code of Canons sets out a table of kindred and affinity. This constitutes the categories of people related by blood or affinity whom a person may not marry. It has come to our attention that this Appendix does not appear to have been altered when the civil law was changed in 1986. The civil law already allows some people who are related by affinity (but not blood) to marry so long as both parties are at least 21 years old at the time of the marriage and provided the younger party has not at any time before the age of 18 lived in the same household as the other party and been treated by the other party as a child of his or her family. A consequence of this discrepancy between the civil law and the Appendix to the Code of Canons is that a registrar may issue a Marriage Schedule for a couple related by affinity and who are permitted by the civil law to marry but who may not be married by the SEC. Consequently, clergy should ensure that they check whether any proposed marriage would fall within the prohibited degrees of relationship set out in Appendix 26. The number of marriages likely to be affected by this discrepancy is expected to be minimal.

The Faith and Order Board has decided to consider whether the Appendix 26 should be altered to align with the civil law in this regard once the current period regarding the understanding of same-sex relationships has been concluded.

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Scottish Episcopal Church

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