



**Statement to accompany the response of the Humanist Society Scotland to the Consultation on the
Registration of Civil Partnerships and Same Sex Marriage** **06/12/11**

This is the official response of the Humanist Society Scotland, the Scottish charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. We aim to reflect the views of the millions of Scots who have no religious belief, and want to promote a secular Scotland - one in which there is equal treatment in law and policy of everyone, regardless of religion, belief and non-belief.

We are the largest provider of humanist marriage ceremonies in Scotland. Government statistics for 2010 show that the 2092 weddings conducted by the Society's Celebrants outnumbered the 1776 weddings conducted by the Catholic Church. This makes humanist weddings the third most popular form of marriage ceremony in Scotland, and even as marriages overall are in long term decline, humanist marriage ceremonies are the only form that is growing in popularity. On a current linear projection, humanist weddings are set to overtake those provided by the Church of Scotland in 2015.

This is part of the trend away from religious, and towards secular, weddings. In 2010, 58% of weddings in Scotland were secular (51% civil, plus 7% humanist). This compares to 21% Church of Scotland, and 6% Catholic. This, in turn, is part of the long term turning away from formal religions and religious observance in Scotland. The Humanist Society asserts that these facts mean the churches are no longer entitled to claim a right to regulate the institution of marriage.

Humanist ceremonies were legalised in 2005, making this country one of only six in the world where humanist weddings are legally recognised. The Society has recently reached 99 Celebrants, of whom 72 are authorised by the Registrar General of Scotland to conduct legal weddings. Our Celebrants work all over the Scottish mainland and islands, and wedding venues can be anywhere safe and dignified; this has included the summit of Ben Nevis.

The Humanist Society Scotland has a membership of 7069, and is committed to working for a Scotland that is fair and equal, in which personal autonomy is respected, and all voices are heard. On this basis, the core position we adopt in this consultation response is that in principle, both statuses (civil partnership and marriage) ought to be available to any couple (same or mixed sex), in either form (religious or non-religious), and to any celebrant to perform and register (with the proviso that no celebrant should be obliged to perform and register any particular civil partnership or marriage, subject of course to the requirements of existing anti-discrimination laws, and the obvious exception that Civil Registrars do not perform religious ceremonies). The overriding reason for this position is that the personal motivations for, and the social benefits of, marriage are universal, irrespective of the gender and sexuality of the couple. We repeat this core position only as required to make each response robust.

We fully acknowledge and support the commitment of the Scottish Government to achieving a fair and inclusive Scotland, and stand ready to play our part. We understand that the job of Government is to reconcile conflicting points of view, and that those who oppose Same Sex Marriage are committed to their position. But – for the reasons given in this statement and in the submission below - we assert that their arguments are out of date, regressive and (in effect if not in intention) discriminatory. Since the Reformation and the Enlightenment, Scotland has been at the centre of progressive and civilised values and practice. This is the heritage that we, alongside a majority of Scottish adults and the present Government, wish to see furthered now.

For and on behalf of
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1/Do you agree that legislation should be changed so that civil partnerships could be registered through religious ceremonies?

- Yes

Please give reasons for your answer:

The core position we adopt in these consultation responses is that in principle, both statuses (civil partnership and marriage) ought to be available to any couple (same or mixed sex), in either form (religious or non-religious), and to any celebrant to perform and register (with the proviso that no celebrant should be obliged to perform and register any particular civil partnership or marriage, subject of course to the requirements of existing anti-discrimination laws, and the obvious exception that Civil Registrars do not perform religious ceremonies). On this basis, we answer yes to Q1 - as long as same sex marriage is also available, in principle, as a religious ceremony.

2/Do you think that the proposals in England and Wales on registration of civil partnerships in religious premises would be appropriate for Scotland?

- No

If you have answered no, please explain what elements of the proposals in England and Wales you consider inappropriate for Scotland:

The proposals in England and Wales would only allow Civil Registrars to use religious premises to perform a civil partnership ceremony. This is a token measure that defuses the issues, rather than addresses them – because it changes only the venue of the ceremony, and not the status of the couple’s formal relationship. While some couples might feel better for this, it is palliative rather than curative – and so, we would prefer to see both statuses (civil partnership and marriage) made available to any couple (same or mixed sex), in either form (religious or non-religious).

3/Do you agree with allowing religious celebrants to register civil partnerships in religious premises?

- Yes

Please give reasons for your answer:

Celebrants – religious or not – should be entitled to register civil partnerships as they choose, and if the couple wish this to be a religious ceremony, then that should be available to them. This would help to give civil partnerships the same emotional significance as marriage – undermining the view held by some that civil partnership counts only as ‘marriage light’.

4/Do you agree with allowing religious celebrants to register civil partnerships in other places agreed between the celebrant and the couple?

- Yes

Please give reasons for your answer:

The core position - that in principle, both statuses (civil partnership and marriage) ought to be available to any couple (same or mixed sex), in either form (religious or non-religious), and to any celebrant to perform and register - there is no reason not to allow religious celebrants to register a civil partnership anywhere they and the couple agree. The Humanist Society's experience is that many couples want their ceremony to be in places of special significance or beauty, often outdoors, and this helps to make the occasion especially joyful – there is no reason to deny this possibility to couples who want a civil partnership performed by a religious celebrant.

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

- Yes

Please give reasons for your answer:

On the basis of the separation of church and state, we believe it crucially important that the core position - that in principle, both statuses (civil partnership and marriage) ought to be available to any couple (same or mixed sex), in either form (religious or non-religious), and to any celebrant to perform and register – be extended to religious organisations. This means they should be free to choose what ceremonies they conduct (subject to the laws on discrimination that clearly, and already, override this). In precedent, a religious organisation can refuse to marry divorced people. They are de facto separate to the state, and therefore must be allowed this freedom under the law.

6/Do you consider that religious celebrants should not be allowed to register civil partnerships if their religious body has decided against registering civil partnerships?

- No

Please give reasons for your answer:

Again, on the basis of the separation of church and state, we believe the law should not intervene in the relationship between celebrants and their organisations. It is a matter of record that some celebrants do want to register civil partnerships, against the policy of their organisation - and this should be a matter of internal debate for them. Celebrants, organisations and couples need to be granted the freedom to resolve this issue themselves, so that dissenting and diverse voices are heard, and progressive change is facilitated rather than stifled.

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

- Yes

Please give reasons for your answer:

In the spirit of our answer to Q6, we would naturally say that freedom of choice on the part of celebrants applies here as well. In the event that civil partnerships are made available to all couples, then this answer still applies – because the individual religious celebrant is entitled to the view that marriage is the only ceremony they are prepared to conduct.

8/Which of the options do you favour to ensure that religious bodies and celebrants do not have to register civil partnerships against their will?

- Option 1: Extend the existing authorisations of celebrants under the Marriage (Scotland) Act 1977 for opposite sex marriage so that the same celebrants would automatically have the ability to register civil partnerships. It would be made clear that religious bodies and celebrants who did not wish to register civil partnerships would not be required to do so.

Please give reasons for your answer and if you have another option, please describe it.

Option 1 is entirely consistent with our core position: that in principle, both statuses (civil partnership and marriage) ought to be available to any couple (same or mixed sex), in either form (religious or non-religious), and to any celebrant to perform and register. We can think of no better approach.

9/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

Please give reasons for your answer:

For reasons given at Qs 5, 6 & 7, we propose that as far as possible, the state and law be kept out of the internal politics of religious organisations. Individual religious celebrants may want and choose to use their organisation's premises to register civil partnerships. If their organisation opposes this, then that is a matter for the celebrant and the organisation to sort out themselves. This would help to encourage religious organisations to take account of the views of their own adherents, again ensuring that dissenting and diverse voices are heard, and progressive change is facilitated rather than stifled.

10/Do you agree that the law in Scotland should be changed to allow same sex marriage?

- Yes

Please give reasons for your answer:

Clearly, Scottish public opinion is in favour, with the Social Attitudes Survey showing 61% approval. We believe this is at least as high as in any other country. It reflects, we believe, a widespread acceptance that:

- The public interest arguments in favour of marriage apply equally to same sex couples. Familial and societal cohesion, the loving and responsible upbringing of children, and social inclusiveness can only be helped by extending the status of marriage to couples of the same sex. We know of no evidence to the contrary from any jurisdiction already allowing same sex marriage.
- Scotland has a proud history of being a progressive, civilising influence in the world. From the Scottish Enlightenment to the adoption of human rights legislation, and the recognition of humanist marriages, this country has been a change-maker. As other jurisdictions start to introduce same sex marriage (and even David Cameron supports it), we propose that Scotland is once again a front runner.
- Same sex marriage simply acknowledges reality. Same sex couples are a fact; they live as families in every way, many of them bringing up children. It is a social form that has always been an element of human society, and human nature. When an opponent of same sex marriage claimed that “no government can rewrite human nature” (7 September 2011, widely reported), he was just denying the reality. To legalise same sex marriage is to legalise reality.

These are the three pillars of our position.

11/Do you agree that religious bodies and celebrants should not be required to solemnise same sex marriage?

- Yes

Please give reasons for your answer:

Again, we would extend the essence of our core position – that in principle, both statuses (civil partnership and marriage) ought to be available to any couple (same or mixed sex), in either form (religious or non-religious), and to any celebrant to perform and register – to religious celebrants. They should be free, subject to the constraints of existing laws, to choose what couples they marry. Any celebrant should be free to solemnise a same sex marriage, but not required.

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

- No

Please give reasons for your answer:

Our core position entails that the institution of marriage is not ‘chopped up’ into different categories. Marriage is and should remain one legal and cultural entity, whatever further values an organisation, celebrant or couple may place on it for themselves. If same sex marriage is only available in civil form, some – including religious same sex couples – may regard it as inferior to (in their terms) ‘proper’ religious marriage, and this would merely reinvent the current distinction between civil partnership and marriage. That would be a backward step.

13/Do you agree with the introduction of same-sex marriage, both religious and civil?

- Yes

Please give reasons for your answer:

Please see our answer to Q12.

14/Do you agree that religious bodies should not be required to solemnise same sex marriage?

- Yes

Please give reasons for your answer:

We give the same answer we gave to Q5. On the basis of the separation of church and state, we believe it crucially important that the core position - that in principle, both statuses (civil partnership and marriage) ought to be available to any couple (same or mixed sex), in either form (religious or non-religious), and to any celebrant to perform and register – be extended to religious organisations. This means they should be free to choose what ceremonies they conduct (subject to the laws on discrimination that clearly, and already, override this). In precedent, a religious organisation can refuse to marry divorced people. They are de facto separate to the state, and therefore must be allowed this freedom under the law.

15/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?

- No

Please give reasons for your answer:

We give an answer similar to the one we gave to Q6. Again, on the basis of the separation of church and state, we believe the law should not intervene in the relationship between celebrants and their organisations. Some celebrants may want to register same sex marriages, against the policy of their organisation - and this should be a matter of internal debate for them. Celebrants, organisations and couples need to be granted the freedom to resolve this issue themselves, so that dissenting and diverse voices are heard, and progressive change is facilitated rather than stifled.

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

- Yes

Please give reasons for your answer:

We give an answer similar to the one we gave to Q7. In the spirit of our core position, we would naturally say that freedom of choice on the part of celebrants applies here as well. The celebrant is not an agent of the state, and so there would need to be an overriding public interest argument to impose this requirement.

17/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?

- Option 1: Celebrants currently authorised to solemnise marriages would be automatically authorised to solemnise same sex marriages also. Neither celebrants nor religious bodies would be obliged to solemnise same sex marriages.

Please give reasons for your answer and if you have another option, please describe it.

Option 1 is entirely consistent with our core position: that in principle, both statuses (civil partnership and marriage) ought to be available to any couple (same or mixed sex), in either form (religious or non-religious), and to any celebrant to perform and register. It simply treats same sex marriages as marriages, and that is the point of the proposal. We can think of no better approach.

18/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

Please give reasons for your answer:

We give an answer similar to the one we gave to Q8. We propose that as far as possible, the state and law be kept out of the internal politics of religions organisations. Individual religious celebrants may want and choose to use their organisation's premises to solemnise same sex marriages. If their organisation opposes this, then that is a matter for the celebrant and the organisation to sort out themselves. This would help to encourage religious organisations to take account of the views of their own adherents, again ensuring that dissenting and diverse voices are heard, and progressive change is facilitated rather than stifled.

19/If Scotland should introduce same-sex marriage, do you consider that civil partnerships should remain available?

- Yes

Please give reasons for your answer:

Our core position is that both statuses (civil partnership and marriage) ought to be available to any couple (same or mixed sex), in either form (religious or non-religious), and to any celebrant to perform and register. Consider the cases of:

- A mixed sex Catholic couple, one of them a divorcee. They may wish to enter into a civil partnership, accepting their church's rule against marrying them.
- An mixed sex atheist couple who regard marriage as an essentially religious or reactionary institution, even in its civil form. They may wish to enter into a civil partnership.
- A same sex couple, one of them having previously been in a mixed sex marriage. They may wish to enter into a civil partnership to mark the distinction between the previous and new relationships.

It is the atypical cases that make the case for civil partnerships remaining available.

20/Do you have any other comments?

- Yes. As the major provider of humanist marriages, and the only growing form of marriage in Scotland, we have adopted a policy that our celebrants will be committed to providing a marriage ceremony for any qualifying same sex couple. We wholly welcome this proposal, and look forward to playing our part in providing the humanist ceremonies that will result from it. We regard the desire of any couple to marry as equally legitimate, irrespective of their sex.

We are particularly interested in your views on:

- **Potential implications of the proposals for transgender people**
 - We believe that bringing same sex and opposite sex marriage laws into line bypasses any implications for transgender people becoming married, as it makes legal sex, gender and sexuality irrelevant to eligibility to marry. It also means that people who are already married and change gender can, if they and their 'pre-change' partner wish, stay married.
- **Possible transitional arrangements**
 - We propose that legislation or Ministerial guidance could provide for no significant registration costs to be incurred by those currently in civil partnerships, wishing to become married. A small registration fee would be appropriate, but not solicitor's or other fees related to a legal process to dissolve the partnership. A straightforward change of status would be appropriate.
- **Recognition of Scottish same sex marriages elsewhere**
 - If a same sex marriage is simply a legal marriage then Scotland, via the UK Government, should expect full and unconditional recognition, as is the case with Sweden currently.
- **Any comments on forced marriage**
 - Forced marriage is abhorrent, and the laws, treatment and debate over it should apply equally to same sex forced marriage.
- **Any comments on sham marriage**
 - Sham marriage is fraudulent and illegal, and the laws, treatment and debate over it should apply equally to same sex sham marriage.
- **Potential financial implications**
 - There will certainly be initial costs of introduction, and ongoing costs of administration and enforcement. But in the context of total public spending, these would seem to be very small, and they should not be allowed to act as a barrier in the debate over this Bill.
- **Potential equality implications**
 - As far as we can see, these are wholly benign, and consistent with existing equality and anti-discrimination practice and legislation.

