

Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”)

Advice from the Principal Clerk

The Law of the Church of Scotland provides only that ministers and deacons are able to marry couples of the opposite sex. The Church’s Recognition of Marriage Services Act (Act I 1977) http://www.churchofscotland.org.uk/_data/assets/pdf_file/0016/1816/1977_act_01.pdf states that a minister or deacon of the Church of Scotland may solemnise the marriage of parties who “covenant together to take each other as husband and wife”.

Therefore, the Church of Scotland as a denomination would have to change its own Marriage Act before any decision could be made that led to the Church of Scotland opting in to the conducting of marriages between those of the same sex when the Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”) comes into force. The Church would only change its Marriage Act if it decided to change its theology of marriage. Unless such a decision is made, individual ministers and deacons of the Church of Scotland will not, in terms of either Church or civil law, be able to solemnise marriages between those of the same sex.

When the 2014 Act comes into force, there are two ways in which a Church of Scotland minister or deacon could become eligible to conduct a same sex marriage:

- **Route 1:** The Church of Scotland could request the Scottish Ministers to prescribe it as a body whose ministers and deacons are authorised to solemnise marriage between persons of same sex, and the Scottish Ministers would have to consider whether to grant that request, **or**
- **Route 2:** Rather than becoming a “prescribed body” under Route 1, the Church could nominate to the Registrar General individual ministers and deacons who wish to conduct same sex marriages as persons who it desires should be entitled to solemnise same sex marriages.

The Scottish Government has indicated that it would not expect Route 1 to be used where a Church has celebrants who object to solemnising same sex marriage. However, were Route 1 to be followed, so that Church of Scotland ministers and deacons generally became able to conduct same sex marriages, individual ministers and deacons would have to decide whether they wished to conduct same sex marriages and there would be a protection on grounds of conscience for those who did not wish to do so: it is stated in the 2014 Act that these provisions would not impose a duty on any person who is eligible to conduct marriages between persons of the same sex actually to conduct such marriages.

The Church of Scotland has not considered, and as of now has no plans to consider whether it would change its own marriage law and then take any steps to become a prescribed body or to make nominations under the Act. An examination of whether or not the Church of Scotland should, by either of Route 1 or Route 2, permit its ministers and deacons to conduct same sex marriages would have to be instructed by the General Assembly and future General Assemblies, following Barrier Act procedure, would have to approve any proposed change to the present status quo. This would be an internal discussion on the Church’s own Recognition of Marriage Services Act and on the theological implications of recognition of same sex marriage.

In short, as matters stand as at March 2014, the change in civil law made by the 2014 Act will not impact upon ministers and deacons of the Church of Scotland.

FAQs

I am a minister of the Church of Scotland. Once the Marriage and Civil Partnership (Scotland) Act 2014 comes into force, will I be entitled to conduct same sex marriages?

No, you will not. For that to happen the Church would have to ask the Scottish Ministers to prescribe it or nominate ministers who wish to carry out same sex marriages under the 2014 Act. Before that could happen, the matter would need to have been considered by the General Assembly and the Assembly would need to have taken a decision in favour of allowing solemnisation of same sex marriage by some or all of its ministers.

I am a minister of the Church of Scotland and as a matter of conscience, would not wish to conduct same sex marriages. What safeguards exist for me?

As noted above, the General Assembly would first need to have considered and taken a decision in favour of allowing solemnisation of same sex marriage by some or all of its ministers. Even if the Church then made a request to the Scottish Ministers to become a prescribed body and that request was granted (Route 1), the 2014 Act and the Equality Act as amended provide a protection on grounds of conscience, stating that there is no duty on approved celebrants to solemnise same sex marriages. If the alternative route (Route 2) were to be followed, and the Church were to nominate named ministers and deacons to be authorised to conduct same sex marriages, then the Scottish Government will expect the Church only to do so in respect of persons who wish to solemnise same sex marriage.

I am a minister of the Church of Scotland and in order to offer a full and inclusive ministry to those who present themselves for marriage, I want to be eligible to conduct same sex marriages. Can I nominate myself as an approved celebrant?

No, unless the Church becomes a “prescribed body”, you must be nominated by the Church, and as noted above, at the moment the Church has no plans to consider changing its marriage law.

Can I apply for temporary authorisation so as to conduct a particular ceremony?

No, only those clergy belonging to denominations which are prescribed bodies or which have nominated individuals as celebrants can be temporarily authorised to conduct a same sex marriage.

How does the Act impact upon deacons?

The Act confirms that deacons will be entitled to conduct marriages between persons of different sex. The provisions for same sex marriage entitle deacons to conduct same sex marriages on the same basis as ministers (ie if the same Church procedures and then civil law procedures were first followed).

What is the position in terms of the Act as to whether Church of Scotland ministers and deacons may register civil partnerships?

The Act contains provisions which mirror those on same sex marriage ie the Church would either need to ask to become a “prescribed body” or would have to nominate certain persons to the Registrar. As with same sex marriage, the Church has no current plans to do so.

I am a minister of the Church of Scotland, serving in a congregation or chaplaincy in England. How does what is said above apply to me?

There are two aspects to consider: the provisions of Church law and also those of the civil law.

The content of this note as to Church law would be equally applicable ie that the Church of Scotland as a denomination would first have to change its own Recognition of Marriage Services Act before any decision could be made that would lead to a Church of Scotland minister being able to conduct a same sex marriage.

As to civil law, the 2014 Act applies only in Scotland. In England and Wales, the relevant legislation is the Marriage (Same Sex Couples) Act 2013 (“the 2013 Act”). Many of its provisions came into force on 13 March 2014, and the first same sex marriages in England took place from 29 March 2014.

In England, marriages can only be solemnised in certain buildings; unlike Scotland, it is not a celebrant-based system. Under the 2013 Act, a marriage of a same sex couple can only be solemnised in a place of worship if the building in question is separately registered for marriage of same sex couples under new legislative provisions. In order for that registration to happen, the “relevant governing authority” of the relevant religious organisation (ie in the case of the Church of Scotland, the General Assembly), must have given written consent to marriages of same sex couples.

As with the Scottish legislation, there are specific provisions in the 2013 Act ensuring that no religious organisation or representative can be compelled to conduct religious ceremonies for same sex couples.

So in overall terms, the scheme will be the same as in Scotland, in that first Church law would need to change to enable same sex marriages to be conducted, and only then could the Church consider the civil law processes.

I am a minister serving in the Presbytery of Europe. What is my situation?

No doubt the civil law varies greatly across the different charges in their various jurisdictions, but unless Church law is changed, no Church of Scotland minister may conduct a same sex marriage in any location.