

# RETURN TO OVERTURES

May 2016

## PROPOSED DELIVERANCE

### The General Assembly:

1. Receive the Report.
2. Convert into a Standing Law of the Church the Overture amending the Ministers and Deacons in Civil Partnerships Act, as printed in Appendix B.

## REPORT

### 1. Introduction

As will be seen from the returns detailed in Appendix A, the Overture amending the Ministers and Deacons in Civil Partnerships Act sent to Presbyteries by last year's General Assembly, received sufficient support to be presented for enactment.

### 2. Comments on the Overture

2.1 Comments were received from six Presbyteries.

2.2 Two Presbyteries made remarks of a similar nature, suggesting that it should be clarified within the text of the Overture that its use of the term "same sex marriage" refers only to the civil law creation under the Marriage and Civil Partnership (Scotland) Act 2014. One Presbytery suggested replacing the words "same sex marriage" with "same sex civil marriage", and another proposed that the replacement words should be "union known in Scots law as same sex marriage".

2.3 The Committee is persuaded that some textual amendment to the Overture would be beneficial. It has considered the definition of same sex marriage which was contained in the Overture sent down to Presbyteries: "

"same sex marriage" shall mean a marriage between persons of the same sex which is recognised as valid under Scots law".

The Committee agrees that the definition should be amended to refer more directly to the civil law definition. The Committee believes that such a change would bring increased clarity to the Overture, and also that it would bring consistency to the definitions of same sex marriage and civil partnership in the Overture, as both would then be defined by reference to civil law Acts. The Committee therefore proposes that the definition of same sex marriage be amended to read as follows:

"same sex marriage" shall mean a marriage between persons of the same sex which is recognised as valid in terms of the Marriage and Civil Partnership (Scotland) Act 2014".

The Overture as printed in Appendix B has been amended accordingly.

2.4 One Presbytery asked that the Theological Forum be encouraged to initiate a wide-ranging debate within the Church on the theological implications of the introduction into civil law of same sex marriage. The Committee understands that the Theological Forum is already undertaking such a study, with a report due to the Assembly of 2017.

2.5 One Presbytery which disapproved the Overture highlighted what it believed would be practical inconsistencies which would flow from the passing of it into legislation. The Presbytery drew attention to the anomaly that while ministers and deacons could not themselves be in a same sex marriage, they could not solemnise the marriage of other same sex couples. Against that view, others have pointed out that failure to enact the Overture would leave the Church of Scotland in the incongruous position of according a status to one form of same sex relationship recognised in civil law over another. The Committee believes that last year's Joint Report of the Legal Questions Committee and the Theological Forum addresses these concerns.

### 3. Adjustments to text

3.1 As set out and explained at paragraph 2.3 above, the definition of "same sex marriage" in the Overture has been amended.

*In the name and by the authority of the Committee*

JOHN P CHALMERS, *Convener*

## APPENDIX A RETURNS

No of Presbyteries		Members voting for	
Approving	Disapproving	Approving	Disapproving
26	19*	1,207	1,096

\* One Presbytery was tied and the Committee took the view that this amounts to a Presbytery not approving the Overture.

## APPENDIX B

### OVERTURE AMENDING THE MINISTERS AND DEACONS IN CIVIL PARTNERSHIPS ACT (ACT I 2015)

The General Assembly, with the consent of a majority of Presbyteries, hereby enact and ordain that the Ministers and Deacons in Civil Partnerships Act (Act I 2015) shall be amended as follows:

1. In the title of the Act and wherever the Act is referred to, after "Ministers and Deacons in Civil Partnerships", insert:
 

"and Same Sex Marriages"
2. Insert new section 1(i):
  - (i) "same sex marriage" shall mean a marriage between persons of the same sex which is recognised in terms of the Marriage and Civil Partnership (Scotland) Act 2014. and renumber accordingly.
3. In section 2(1), after "human sexuality" insert:
 

"(including marriage)"
4. Wherever "a civil partnership" appears, insert thereafter:
 

"or a same sex marriage"
5. Add new section 8:
 

"8. Nothing in this Act implies that the Church permits or will permit its ministers or deacons to register civil partnerships or solemnise same sex marriages."

 and renumber accordingly.