

# RETURNS TO OVERTURES

## May 2015

### PROPOSED DELIVERANCE

#### The General Assembly:

1. Receive the Report.
2. Convert into a Standing Law of the Church the Ministers and Deacons in Civil Partnerships Overture as amended, as printed in Appendix B.
3. Agree that the Joint Report received from the Theological Forum and the Legal Questions Committee regarding the effect of the introduction of same sex marriage on the provisions of the Overture should be presented directly to the General Assembly at an appropriate point in the business by the Convener of the Theological Forum.

## REPORT

### 1. Introduction

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

### 2. Changes in Civil Law

2.1 In addition to approving the Overture, the General Assembly of 2014 under the report of the Legal Questions Committee approved these sections of deliverance:

- i. Recognising that same sex marriage laws may by May 2015 have been enacted and brought into force, instruct the Theological Forum in consultation with the Legal Questions Committee to prepare a report for the Committee on Returns to Overtures on whether or not same sex marriage should be recognised as equivalent to civil partnership in terms of the Overture;*
- ii. Instruct the Committee on Returns to Overtures, on receipt of the joint report from the Theological Forum*

*and the Legal Questions Committee, to include in their Report, either (1) commentary on the question raised in (i) above, or (2) amendments to the Overture (as appropriate) which reflect the conclusions reached by the Theological Forum and the Legal Questions Committee.*

2.2 Subsequently, the Scottish Parliament did indeed pass and enact legislation which created the legal entity of same sex marriage.

2.3 Having had the opportunity to consider this legislative innovation, the Committee came to the conclusion that the introduction of of same sex marriage into Scots law meant that the Church would indeed need to consider how this would affect the provisions of the Overture.

2.4 The Committee, as instructed, asked the Theological Forum and the Legal Questions Committee to prepare a joint report on the matter. However, the Committee also concluded that the General Assembly would wish to hear directly from the two groups charged with offering

wisdom and practical advice rather than receiving such input through the Report of a small Committee whose Convener is the Acting Principal Clerk.

**2.5** With the support of the Assembly Arrangements Committee it is proposed that the Joint Report of the Theological Forum and the Legal Questions Committee be presented to the General Assembly at a time during the week's business when proper consideration can be given to the matter.

**2.6** The Committee hopes that the General Assembly of 2015 will accept that the Committee has discharged the instructions given to it by last year's Assembly.

### **3. Comments on the Overture**

**3.1** Comments were received from 14 Presbyteries. These covered a wide variety of issues.

**3.2** Some Presbyteries asked about the stage in vacancy process at which the matter of making a decision to depart would be raised. This has been anticipated; if the Overture is passed by the Assembly, the Ministries Council will bring forward an amendment to the Vacancy Procedure Act (Act VIII 2003) which will place a duty upon the Interim Moderator to ascertain whether or not the Kirk Session(s) may wish to follow the procedures of the Overture as to making a decision to depart.

**3.3** Concerns were raised about whether passing the Overture will give rise to the risk of legal action against the Church. Some advice about this was given in the Report of the Legal Questions Committee to last year's Assembly when bringing forward the Overture, and further advice is given this year in the Joint Report of the Theological Forum and the Legal Questions Committee, as referred to above.

**3.4** Some Presbyteries expressed concern about the role given to Kirk Sessions in considering whether to depart, and the need for appropriate guidance to be provided.

**3.5** Some Presbyteries which disapproved the Overture expressed their fundamental concerns about the provisions of the Overture.

### **4. Adjustments to text**

**4.1** A typographical error in section 6(3) has been corrected: it was noted that the third "or" should read "of".

**4.2** It was suggested that Schedule 2 should conclude with the identity and signature of the person by whom it is issued. An appropriate amendment has been made.

**4.3** The text of the Overture as presented in Appendix B includes the adjustments mentioned in paragraphs 4.1 and 4.2.

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

GEORGE J WHYTE, *Convener*

### **APPENDIX A MINISTERS AND DEACONS IN CIVIL PARTNERSHIPS OVERTURE**

| No of Presbyteries |              | Members voting for |              |
|--------------------|--------------|--------------------|--------------|
| Approving          | Disapproving | Approving          | Disapproving |
| 31                 | 14           | 1,381              | 1,161        |

### **APPENDIX B MINISTERS AND DEACONS IN CIVIL PARTNERSHIPS OVERTURE**

*Edinburgh, [ ] May 2015, Session [ ]*

The General Assembly, with consent of a majority of Presbyteries, enact and ordain as follows:

1. For the purposes of this Act:
  - (a) "appointment" shall mean the appointment of a minister (other than the induction of a minister) or deacon to work with or within the life and witness of a congregation. An appointment may be part or full-time, paid or unpaid. An appointment may be made by the Kirk Session,

Congregational Board, Deacons' Court, Committee of Management or other body responsible for employing persons on behalf of a congregation or by the Presbytery or by a Council or Committee of the Church. An appointment shall include the appointment of an Interim Moderator, Ordained Local Minister, Interim Minister or Transition Minister. "Appointed" shall be construed accordingly.

- (b) "call" means the instrument referred to in the Vacancy Procedure Act (Act VIII 2003), sections 25 and 28.
- (c) "civil partnership" shall have the meaning assigned to it in the Civil Partnership Act 2004, section 1.
- (d) "congregation" shall have the meaning assigned to it in the Appraisal and Adjustment Act (Act VII 2003), section 1(b).
- (e) "deacon" shall mean a person who is a deacon within the meaning of the Deacons Act (Act VIII 2010), section 1.
- (f) "linking", "deferred linking" and "deferred union" shall have the meanings assigned to them in the Appraisal and Adjustment Act, section 10.
- (g) "minister" shall include both a person who is a minister within the meaning of the Ministry Act (Act II 2000), section 2 and a person who is an Ordained Local Minister within the meaning of the Ordained Local Ministry Act (Act IX 2011), section 2.
- (h) "Presbytery" shall mean the presbytery of the bounds of the congregation concerned.
- (i) "vacancy" shall mean the state in which a congregation finds itself when it is without an inducted minister.

- (1) The historic and current doctrine and practice of the Church in relation to human sexuality and their application to the ministers and deacons of the Church are hereby affirmed.
  - (2) For the avoidance of doubt, the historic and current doctrine and practice of the Church in relation to human sexuality, their application to the ministers and deacons of the Church and the provisions of this Act are points on which there is liberty of opinion in accordance with Article Declaratory V. Departure from the doctrine of the Church is permitted to this extent.
  - (3) In recognition of the diversity of views within the Church about the historic and current doctrine and practice of the Church in relation to human sexuality and their application to the ministers and deacons of the Church and in the interests of the peace and unity of the Church, departure from the practice of the Church shall be permitted to Kirk Sessions in terms of sections 3, 4 and 5 of this Act only. In this Act, the term 'depart' and its variants shall be construed accordingly.
3. (1) As from the date of this Act, a Kirk Session may decide to depart in order to permit the ordination, induction or appointment of a minister or a deacon who is in a civil partnership.
- (2) A Kirk Session may decide that it wishes to depart only:
- (a) in time of vacancy after meeting with the advisory committee in terms of section 12(2)(a) of the Vacancy Procedure Act and before the appointment of the nominating committee in terms of section 14 of the Vacancy Procedure Act;
  - (b) in time of vacancy between the Presbytery instructing the appointment of a fresh nominating committee and the

- appointment of that committee in terms of section 26(b) of the Vacancy Procedure Act;
- (c) at the time when the making of an appointment is being considered and before applications are sought;
- (d) in terms of section 3(3) of this Act; or,
- (e) in terms of section 3(9) of this Act.
- (3) Where a congregation in vacancy has appointed a nominating committee prior to the date of this Act, the Kirk Session shall be entitled to make a decision to depart in respect of that vacancy in accordance with the provisions of sections 3(4)-(7).
- (4) When deciding whether or not to depart, the Kirk Session shall take account of the peace and unity and pastoral needs of the congregation and of any parish or other grouping of which it is a part.
- (5) To be effective, a decision to depart shall require to be taken in respect of each induction or appointment and may only be taken in accordance with the following process:
- (a) A meeting of the Kirk Session shall be held to take a first vote, of an indicative nature only, on the matter. The date and time of such meeting, and its purpose, must be properly intimated to the congregation on at least two Sundays prior to its date.
- (b) At the first meeting, if a majority of those present and entitled to vote, cast their votes in favour of the decision to depart, then a second vote, of a determinative nature, shall require to be held at a later meeting of the Kirk Session.
- (c) If a meeting for a second vote is to be held, the date and time of such meeting, and its purpose, must be properly intimated to the congregation on at least two Sundays prior to its date.
- (d) At a second meeting, if a majority of those present and entitled to vote, cast their votes in favour of the decision to depart, then the decision to depart shall be deemed to be taken.
- (e) If at either a first meeting or a second meeting, the Kirk Session's vote in favour of the decision to depart does not reach the required majority of those present and entitled to vote, then the matter shall not proceed further in respect of such induction or appointment.
- (6) Meetings in terms of the process outlined in section 3(5) shall be constituted in prayer in accordance with the law and practice of the Church. Only those members of the Kirk Session present at the meeting shall be entitled to vote. Voting shall be by secret ballot using voting papers printed in the form of Schedule 1 hereto. Intimation of the meetings shall be in terms of the edict annexed in Schedule 2 hereto (amended appropriately depending upon whether the meeting in question is a first meeting or a second meeting).
- (7) A Kirk Session which has decided to depart shall intimate its decision by sending an extract minute to the Presbytery Clerk within seven days.
- (8) (a) A minister or deacon in a civil partnership may not be inducted or appointed to a congregation which is in a linking or in deferred linking or deferred union unless the Kirk Sessions of all the other congregations affected have also decided and intimated that they wish to depart.

- (b) Where it is an explicit provision of a Basis of Union or Linking that the minister of one of the congregations involved shall be minister of the united or linked charge and that minister is in a civil partnership, the Basis of Union or Linking shall not be put to a vote of any of the other congregations in terms of the Appraisal and Adjustment Act, section 11(1), unless their Kirk Sessions have decided and intimated that they wish to depart.
- (9) (a) In the event of a minister or deacon subsequently entering into a civil partnership, that minister or deacon having been inducted or appointed to a congregation the Kirk Session of which had not decided to depart in relation to his or her induction or appointment, the Presbytery shall:
- (i) move without delay to offer support and counsel to all affected parties; and,
- (ii) in accordance with the provisions of sections 3(4)-(7) and as soon as is practicable, convene the appropriate meetings of the Kirk Session at which the Kirk Session may decide that it wishes to depart.
- (b) Unless the Kirk Session decides to depart in terms of section 3(9)(a)(ii), the pastoral tie shall be dissolved or the appointment terminated as appropriate.
- (c) Where a congregation is in a linking or in deferred linking or deferred union, the pastoral tie shall be dissolved or the appointment terminated unless the Kirk Sessions of all the other congregations affected have also decided and intimated that they wish to depart.
- (d) In the event of the pastoral tie being dissolved in terms of section 3(9)(b) or (c), provision shall be made for the minister in the same way as provided in section 9 of the Congregations in Changed Circumstances Act (Act VI 1984), with the proviso that the Committee which would review the situation at the end of a two-year period in consultation with the Presbytery shall be the Ministries Council.
- (e) Except as provided for in section 3(9)(f), sections 3(9)(a)-(d) shall apply to any minister or deacon whether inducted or appointed before or after the date of this Act.
- (f) In respect of ministers and deacons who were ordained or inducted or appointed before 31 May 2009, sections 3(9)(a)-(d) shall not apply in respect of a charge or appointment held as at the date of this Act.
- (10) For the avoidance of doubt a person in a civil partnership may only be ordained by a Presbytery as an Ordained Local Minister where there is an agreed designated appointment to a congregation the Kirk Session of which has decided to depart.
4. Subject to section 3(9), the entitlement of a minister or deacon who was ordained or inducted or appointed before 31 May 2009 to remain as a minister or deacon on the same terms and with the same status as any other minister or deacon shall not be prejudiced because he or she was or is in a same sex relationship. Nevertheless he or she may not be inducted or appointed to a congregation the Kirk Session of which has not decided to depart in terms of section 3.
5. (1) A person who is in a civil partnership shall be eligible for selection, training and, as provided

- for in section 3, ordination, as a minister or deacon.
- (2) Once ordained, a minister or deacon who is in a civil partnership shall have the same status, rights and responsibilities as any other minister or deacon respectively, except that he or she may not be inducted or appointed to a congregation the Kirk Session of which has not decided to depart in terms of section 3.
6. In relation to the doctrine and practice of the Church affirmed in section 2, the right to depart provided for in section 3 and the provisions of sections 4 and 5:
- (1) A Presbytery shall not be entitled to refuse to sustain a call to a minister solely on the ground that he or she is in a civil partnership, provided that the call is made by the members and adherents of a congregation the Kirk Session of which has decided to depart in terms of section 3 of this Act. The rights and responsibilities of a Presbytery to exercise superintendence over all the congregations within its bounds are otherwise unchanged.
- (2) A member of a Presbytery may decline, on the ground of his or her differing convictions, to accept appointment or to continue as Interim Moderator of a congregation the Kirk Session of which has decided to depart in terms of section 3 of this Act.
- (3) A member of a Presbytery may decline, on the ground of his or her differing convictions, to attend the ordination, induction or introduction of a minister or deacon who is in a civil partnership within the bounds of the Presbytery.
- (4) Other than as provided for in sections 6(2) and (3) a member of a Presbytery shall not be excused the duties or responsibilities of membership.
- (5) A Presbytery shall take account of differences of opinion among its members and congregations when conducting its business and fulfilling its duties and responsibilities and shall at all times have regard to the peace and unity of the Church.
- (6) If required, a Presbytery shall invite one or more members of one or more other Presbyteries to associate with the Presbytery for the purpose of effecting an ordination, induction or introduction. Such members of other Presbyteries shall be deemed to be members of the inviting Presbytery for the purpose of effecting the ordination, induction or introduction only. Section 30 of the Church Courts Act (Act III 2000) shall be construed accordingly.
7. The provisions of this Act give effect to the strongly held religious convictions of significant numbers of the followers of the Church of Scotland.
8. For the avoidance of doubt, a person with a legitimate interest who is aggrieved by a decision made by a court in terms of this Act, may appeal to Presbytery only on one or more of the legal grounds specified in section 1 of the Intimation of Appeals Act (Act V 2004).

### Schedule 1

Voting Paper – section 3(6)

|  |  |
|--|--|
| FOR departure from the Church's practice in relation to human sexuality in respect of [ <i>*the current vacancy / *the proposed appointment of a (insert title of appointment)</i> ] |  |
| AGAINST departure from the Church's practice in relation to human sexuality in respect of [ <i>*the current vacancy / *the</i>   |  |

|   |  |
|---|--|
| <i>proposed appointment of a (insert title of appointment)]</i> |  |
|---|--|

*Footnote: A vote in favour of departure will allow applications for [\*the current vacancy / \*the proposed appointment of a [insert title of appointment]] to be considered from, amongst others, individuals who are in a civil partnership.*

*\*Please select appropriate alternative*

**Schedule 2**

Edictal intimation of Kirk Session meeting to be read out to congregation – section 3(6)

*To be read on two Sundays*

This is intimation that a meeting of the Kirk Session of this congregation is to be held at [*place*] on [*date*] at [*time*].

In recognition of the diversity of views within the Church about the historic and current doctrine and practice of the Church in relation to human sexuality and in the interests of the peace and unity of the Church, departure from the practice of the Church in relation to human sexuality is permitted in certain circumstances.

The purpose of the Kirk Session meeting just intimated will be for the Kirk Session to decide whether to depart from the Church's practice in relation to human sexuality

in order for applications for [*\*the current vacancy / \*the proposed appointment of a [insert title of appointment]]* to be considered from, amongst others, individuals who are in a civil partnership.

In terms of the process for a decision to depart contained in the [Ministers and Deacons in Civil Partnerships Act] (Act [ ] [2015], this will be a [*\*first meeting of the Kirk Session on this matter and therefore the vote will be of an indicative nature only. It will require to be followed up at a subsequent meeting of the Kirk Session by a second vote in favour of the decision to depart in order to take effect. OR \*second meeting of the Kirk Session on this matter and therefore the vote will be of a determinative nature. If the vote is in favour of the decision to depart, then that decision will take effect.*]

Both votes on this matter must achieve a majority of those present and entitled to vote in order to take effect.

C.....D.....Interim Moderator

*\*Please select appropriate alternative.*

*Note: the form of the above edictal intimation will require to be amended appropriately where the charge in question is part of a linking, deferred linking or deferred union.*