

I MINISTERS AND DEACONS IN CIVIL PARTNERSHIPS AND SAME SEX MARRIAGES ACT (ACT I 2015) (AS AMENDED BY ACTS I, IX AND X 2016)

Edinburgh, 16 May 2015, Session I

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 26 and 30.
 - (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 mean a Minister of Word and Sacrament as defined in section 1(2) of the Parish Ministry Act (Act II 2018).
 - (h) “Presbytery” shall mean the presbytery of the bounds of the congregation concerned.
 - (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.
 - (j) “vacancy” shall mean the state in which a charge finds itself when it is without an inducted minister and shall include the situation of a prospective vacancy where an Interim Moderator has been appointed under section 6(1) of the Vacancy Procedure Act (Act VIII 2003).
2.
 - (1) The historic and current doctrine and practice of the Church in relation to human sexuality (including marriage) 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 or a same sex marriage.
 - (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 13(2)(a) of the Vacancy Procedure Act and before the appointment of the nominating committee in terms of section 15 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 28(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 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, a second vote 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, 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, 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 or a same sex marriage 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 or a same sex marriage, 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 or a same sex marriage, 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 18 of the Congregations in Unsatisfactory State Act (Act I 1988).

- (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 or a same sex marriage 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 or a same sex marriage 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 or a same sex marriage 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 or a same sex marriage, 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 or a same sex marriage 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. 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.
9. 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 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 or a same sex marriage.*

**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 or a same sex marriage.

In terms of the process for a decision to depart contained in the Ministers and Deacons in Civil Partnerships and Same Sex Marriages Act (Act I 2015), this will be a [**first meeting of the Kirk Session on this matter. If the first vote is in favour of the decision to depart, 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 for that decision to take effect. If the first vote is not in favour of the decision to depart, that decides the matter and no further vote will be held. OR *second meeting of the Kirk Session on this matter. The vote at the second meeting will decide whether or not the decision is made to depart.*]

Any vote 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.