

## REPORT ON RETURNS TO OVERTURES MAY 2022

### Proposed Deliverance

#### The General Assembly:

1. Receive the Report.
2. Convert into a Standing Law of the Church the Overture Amending the Church Courts Act (Act III 2000) as printed in Appendix C.
3. Convert into a Standing Law of the Church the Solemnisation of Same-Sex Marriage Overture as printed at Appendix D.

### Report

#### 1. INTRODUCTION

**1.1** As will be seen from the Returns detailed in Appendices A and B, the Overture Amending the Church Courts Act and the Solemnisation of Same-Sex Marriage Overture have both received sufficient support to be presented for enactment.

#### 2. COMMENTS FROM PRESBYTERIES ON THE OVERTURE AMENDING THE CHURCH COURTS ACT

**2.1** Comments were received from seven Presbyteries.

**2.2** One asked about how the parity of numbers of ministers and elders would be affected by the allocation of *ex officio* membership of the General Assembly to former Moderators. The Committee notes that such parity is already not an exact science as other *ex officio* members such as the officials of the General Assembly may not have equal numbers of elders and members. It is also true that former Moderators may be elders. The Committee understands that the Assembly Business Committee does not believe that this should be a reason for not approving the Overture as the numbers involved are a small proportion of the whole membership.

**2.3** Two Presbyteries expressed a concern that the Mission Plan process would reduce the number of charges and will in time lead to a reduction in the size of the Assembly. Another suggested that a smaller General Assembly would increase the centralization of the Church and diminish local involvement. The Assembly Business Committee is encouraged to keep these issues under review.

**2.4** It was suggested by one Presbytery that to improve the effectiveness of the General Assembly the number of Kirk Sessions should be the starting point for the calculation of commissioner numbers rather than it being related to the number of charges. The Assembly Business Committee may wish to consider this point.

**2.5** One Presbytery thought that spaces for former Moderators should be further reduced while another suggested that they should be increased from five to ten.

#### 3. COMMENTS FROM PRESBYTERIES ON THE SOLEMNISATION OF SAME-SEX MARRIAGE OVERTURE

**3.1** Comments were received from seventeen Presbyteries.

**3.2** Three noted that individuals had asked for their dissent to be recorded to the Presbytery's approval of the Overture.

**3.3** Two raised the issue of what protection there was for those church employees such as organists and church officers who might not wish to be part of a same-sex marriage ceremony. We understand that the Legal Questions Committee believe that there is sufficient protection in the Overture and in civil law. They would also point to the Procurator's Supplementary Opinion which was attached to the Committee's Report to the 2021 General Assembly. The Committee is aware that the Legal Questions Committee has been asked to produce Guidance and understands that this will comment further on these issues.

**3.4** Concern was expressed around the functioning of the Act's provisions where there are team ministries of the nature envisaged in the Presbytery Mission Plan Act. The Committee would encourage the Legal Questions Committee to keep these matters under review.

**3.5** One Presbytery said the pastoral care of "same-sex attracted" couples who adhered to the Church's traditional views on marriage and sex should be borne in mind.

**3.6** Two Presbyteries who voted against the Overture stated that what is being proposed is contrary to scriptural teaching and would cause further division within the Church of Scotland.

**3.7** One Presbytery recorded a feeling that too many changes are being made to important aspects of the Church at present.

**3.8** Several Presbyteries made detailed points that should be covered in the Guidance material and the Legal Questions Committee is asked to note these.

**3.9** It was noted with concern by one Presbytery that the Overture's arrangements would only apply in Scotland. The Committee suggests that this is a matter which could be raised by a commissioner during the Report of the Legal Questions Committee.

**4. ADJUSTMENTS TO TEXT**

**4.1** No textual amendments are proposed to either Overture.

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

GEORGE J WHYTE, Convener

**Appendix A**

**RETURNS TO THE OVERTURE AMENDING THE CHURCH COURTS ACT (ACT III 2000)**

Number of Presbyteries		Members voting for	
Approving	Disapproving	Approving	Disapproving
39	2	1,625	96

**Appendix B**

**RETURNS TO THE SOLEMNISATION OF SAME SEX MARRIAGE OVERTURE**

Number of Presbyteries		Members voting for	
Approving	Disapproving	Approving	Disapproving
29	12	1,088	656

**Appendix C**

**THE OVERTURE AMENDING THE CHURCH COURTS ACT (ACT III 2000)**

The General Assembly, with the consent of a majority of Presbyteries, hereby enact and ordain that the Church Courts Act (Act III 2000), as amended, shall be further amended as follows:

1. In section 2, delete the words “one in every four or part of four” where they appear in the second line and substitute “one in every five or part of five”.
2. In section 4, delete the words “one in every four, or part of four” where they appear in the second line and substitute “one in every five or part of five”.
3. Delete sections 6(c) and (d) and substitute:

“(c) The five most recent past Moderators who are (i) eligible to receive a Commission, and (ii) not members of the Assembly by virtue of section 6(b) or otherwise members *ex officio*, shall be members of the General Assembly *ex officio*. They shall be appointed in addition to their Presbytery’s number of Commissions in terms of section 2 but no equalizing minister or elder shall be appointed. Their Presbytery shall remain entitled to give Commissions from amongst their allocation in terms of section 2 above to any other former Moderators eligible to be commissioned.”

**Appendix D**

**THE SOLEMNISATION OF SAME SEX MARRIAGE OVERTURE**

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

**Definitions and Interpretation**

1. (a) “Parish Minister” shall have the meaning ascribed to it in the Parish Ministry Act (Act II 2018);
- (b) “Minister of Word and Sacrament” shall have the meaning ascribed to it in the Parish Ministry Act (Act II 2018);
- (b) “same sex marriage” shall mean the process described in the MSA;
- (d) “the MSA” shall mean the Marriage (Scotland) Act 1977 as it exists at 24 May 2021;
- (e) “Deacon” shall mean a person holding the office of Deacon in terms of the Deacons Act (Act VIII 2010);
- (f) “Authorised Celebrant” for the purposes of this Act means a Minister of Word and Sacrament or a Deacon who is empowered to solemnise same sex marriage in terms of the MSA;
- (g) “Principal Clerk” includes a person deputising for the Principal Clerk.

**General provisions**

2. A Minister of Word and Sacrament or a Deacon may apply in terms of this Act to become an Authorised Celebrant for same sex marriage.
3. No person shall be required by this Act to participate in the solemnisation of, or be involved in the arrangements for, a same sex marriage.
4. In all matters referred to in this Act, including but not limited to making application to become an Authorised Celebrant, permitting or granting consent for use of buildings, arranging for the participation of others in the solemnisation of a same sex marriage, and making practical arrangements for same sex weddings, a Minister of Word and Sacrament or a Deacon, as the case may be, 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.

**Becoming an Authorised Celebrant for same sex marriage**

5. The process for becoming an Authorised Celebrant shall be:
  - (i) Application shall be made initially to the Principal Clerk’s Office on a form prescribed by the Principal Clerk.
  - (ii) The Principal Clerk will make application to the Registrar General for Scotland on behalf of the Minister of Word and Sacrament or Deacon, as the case may be, in terms of section 9(1A) of the MSA.
  - (iii) The Principal Clerk will liaise with and advise the Minister of Word and Sacrament or Deacon, as the case may be, of the outcome of the application.
6. The Principal Clerk shall maintain an up to date record of Authorised Celebrants.
7. Authorised Celebrants shall be responsible for initiating their own three yearly renewal of their status in terms of the MSA, although the actual process will be administered through the Principal Clerk’s Office.

**Use of buildings**

8. Only a Parish Minister who has become an Authorised Celebrant in terms of sections 5 to 7 above may, in accordance with and subject to the terms of sections 12 to 15 of the Parish Ministry Act (Act II 2018):
  - (i) permit the use of a Church building in their charge for the solemnisation of same sex marriage, and
  - (ii) grant consent for other Authorised Celebrants to use such a building for the solemnisation of same sex marriage.

For the avoidance of doubt, any specific permission or consent for an individual same sex marriage granted by a Parish Minister in terms of this section 8 shall endure notwithstanding that such Parish Minister subsequently departs from the charge in respect of which such permission or consent was granted.

9. An Interim Moderator who is a Minister of Word and Sacrament shall, for the purposes of this Act, have the same rights and obligations as a Parish Minister under section 8 of this Act in relation to use of buildings.

**Minister’s or Deacon’s discretion**

10. Nothing in this Act shall contravene the general principle of Church law that any Minister of Word and Sacrament or Deacon has the right to determine at any time whether or not to conduct the marriage of any persons.

**Territorial extent**

11. This Act makes provision for same sex marriage conducted in accordance with the MSA.

**Consequential amendments**

12. The Recognition of Marriage Services Act (Act I 1977) shall be amended as follows:
  - (i) *Section 2 shall be deleted and the following shall be substituted:*  
 “Solemnisation of marriage in the Church of Scotland is effected by an ordained minister or deacon in a religious ceremony wherein, before God, and in the presence of the minister or deacon and at least two competent witnesses, the parties covenant together to take each other in marriage as long as they both shall live, and the minister or deacon declares the parties to be married.”
  - (ii) *In section 3, the words “or deacon” shall be inserted after the word “minister”.*
  - (iii) *Section 4 shall be deleted.*
13. The Parish Ministry Act (Act II 2018) shall be amended as follows:  
*Add a new sub-paragraph (5) as follows to section 4:*
  - (5) “where a Minister of Word and Sacrament who is an Authorised Celebrant in terms of the Solemnisation of Same Sex Marriage Act (Act [ ]), enters the bounds of the Charge of an existing Parish Minister who is not such an Authorised Celebrant, to solemnise a same sex marriage.”

**Guidance**

14. The Legal Questions Committee shall produce Guidance to accompany this Act, which Guidance shall be reviewed by it from time to time. Such Guidance shall be taken into account by all those using or affected by this Act.