THE REGISTRATION OF CIVIL PARTNERSHIPS
SAME SEX MARRIAGE

Annex E: RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

CRER (Coalition for Racial Equality and Rights)

Title **Mr** ☐ **Ms** ☒ **Mrs** ☐ **Miss** ☐ **Dr** ☐ ***Please tick as appropriate***

Surname

Young

Forename

Carol

2. Postal Address

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3. Permissions - I am responding as…

Individual ☐ / **Group/Organisation** ☒

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☐ **Yes** ☐ **No**

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

(c) The name and address of your organisation ***will be*** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your ***response*** to be made available?

Please tick as appropriate ☒ **Yes** ☐ **No**

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate ☒ **Yes** ☐ **No**

CONSULTATION QUESTIONS

The registration of civil partnerships

Question 1 (Paragraphs 2.12 and 2.13)

Do you agree that legislation should be changed so that civil partnerships could be registered through religious ceremonies?

Yes ☒
No ☐
Don't know ☐

Please give reasons for your answer.

Couples wishing to make a life-long commitment have varying views about the form they wish this to take. Some do not identify with the concept of 'marriage', viewing it as an outmoded concept which has historically reinforced heterosexual supremacy, gender stereotyping and unequal power relations. Some of those who feel this way may be people of faith. They should therefore have the option to access a legally binding ceremony which reflects their views on both the structure and the religious element of a life-long partnership. In addition, we would support a widening of the current rules to allow civil partnerships to be accessed by mixed-sex couples.

Question 2 (Paragraphs 2.14 to 2.19)

Do you think that the proposals in England and Wales on registration of civil partnerships in religious premises would be appropriate for Scotland?

Yes ☐
No ☒
Don't know ☐

If you have answered no, please explain what elements of the proposals in England and Wales you consider inappropriate for Scotland.

The inability to use religious related terms or worship in these ceremonies negates the benefit of enabling civil partnerships in religious premises. It does not remove the barrier to religious freedom for the couples themselves, nor for the religious bodies and celebrants who wish to conduct these ceremonies.

Question 3 (Paragraphs 2.20 to 2.24)

Do you agree with allowing religious celebrants to register civil partnerships in religious premises?

Yes ☒
No ☐
Don't know ☐

Please give reasons for your answer

It is understood that, as pointed out in the consultation document, civil partnerships were originally intended to be 'civil and secular' in nature. However, this was only a small step towards equality for same-sex couples and in many ways simply reinforced the constitutional discrimination (i.e. rules embedded in law which have the effect of disadvantaging same sex couples) which restricts the options available to couples according to stereotypical and/or narrow views of their needs and rights.

Although this would be a departure from the current situation in Scotland where a civil marriage ceremony cannot be held in religious premises, it would be a positive step forward. The context of this is that civil partnerships are not marriages (as described in our response to Question 1). Currently, mixed-sex couples wishing to enter a marriage can do so in either a civil or religious form. The same degree of choice should be open to those who do not want to marry, but to enter a civil partnership. In essence, we would recommend that four options for life-long partnership should be open to both same-sex and mixed-sex couples: a religious marriage, a religious civil partnership, a secular marriage or a secular civil partnership.

Question 4 (Paragraphs 2.20 to 2.24)

Do you agree with allowing religious celebrants to register civil partnerships in other places agreed between the celebrant and the couple?

Yes ☒
No ☐
Don't know ☐

Please give reasons for your answer

This would be another positive step towards religious freedom for both celebrant and couple. However, the issue of location of ceremonies raises some practical questions. Given the Scottish Government's tendency towards supporting the ability of religious organisations to refuse the use of their premises for same-sex ceremonies, would self-funding non-religious organisations also be granted the ability to reserve use of their premises for secular ceremonies only? Also, would buildings managed by religious

organisations but publicly owned or funded for public use be required to accept same-sex ceremony bookings, in reflection of the rules on exemptions for religious organisations within the Equality Act 2010?

Question 5 (Paragraph 2.25)

Do you agree that religious bodies should not be required to register civil partnerships?

Yes ☐
No ☐
Don't know ☒

Please give reasons for your answer

In the race equality movement we are well aware that true progress towards equality requires both a legislative element and a positive culture change. It is possible that forcing religious institutions to provide such a service could provoke further divisions and hinder rather than help social progress. It is hoped, however, that if this exemption for religious bodies is granted, Scottish Government will continue to assist in building dialogue between faith groups and the LGBT movement in the interests of fostering good relations and progressing attitudinal change.

It should also be remembered that many individuals and institutions who stand against same-sex marriage are doing so from a basis which is not explained by religious factors. Evidence from research published by Stonewall shows that religious people are no more or less likely to be homophobic than those who are non-religious. Any recommendation we make here to allow for religious differences is therefore an 'olive branch' intended to facilitate genuine attitudinal change in the future rather than an acceptance of discriminatory views.

Question 6 (Paragraphs 2.26 and 2.27)

Do you consider that religious celebrants should not be allowed to register civil partnerships if their religious body has decided against registering civil partnerships?

Yes ☐
No ☒
Don't know ☐

Please give reasons for your answer

There may be religious institutions who wish to allow freedom of choice amongst celebrants; no barriers should be put in place to prevent this.

Question 7 (Paragraphs 2.28 to 2.30)

Do you agree that individual religious celebrants should not be required to register civil partnerships?

Yes ☐
No ☐
Don't know ☒

Please give reasons for your answer

Although we may agree that some leeway should be made for difference in views of religious groups, this proposal could theoretically lead to progressive institutions having to condone homophobia amongst their celebrants, many of whom will be paid to work for these institutions. A compromise position might be to allow some freedom of choice amongst those religious movements which do not wish to prescribe a course of action for celebrants; at the same time making it clear that organisations who do decide to offer same-sex ceremonies across the board are entitled to proportionately discipline celebrants who refuse to provide that service on homophobic grounds.

This issue is not simply about adherence to the policy of the relevant religious institution. Recent case law has shown that members of the clergy can be considered as employees for the purposes of employment law; that status should arguably confer responsibilities as well as rights. The consultation paper asserts that a requirement to find another celebrant to conduct such a ceremony would not undermine a religious body. However, this is contrary to existing principles of employment case law in non-religious sectors where organisations are entitled to insist that their staff provide an equal level of service to all. The same entitlement should be available to religious organisations who wish to use it.

Question 8 (Paragraphs 2.31 to 2.35)

Which of the options do you favour to ensure that religious bodies and celebrants do not have to register civil partnerships against their will?

Do you favour:

Option 1 ☐
Option 2 ☐
Neither ☒

If you have another option, please describe it.

Option 1 would be preferable, however it would have to include an option for individual organisations to insist on performance of services.

Question 9 (Paragraphs 2.36 to 2.40)

Religious bodies may not wish their premises to be used to register civil partnerships. Do you agree that no legislative provision is required to ensure religious premises cannot be used against the wishes of the relevant religious body?

Yes ☒
No ☐
Don't know ☐

Please give reasons for your answer

As it is difficult to see how any religious premises could easily be used against the wishes of the religious body without some other illegal act being committed (for example trespass), it appears unlikely that legislative measures would be needed.

Same sex marriage

Question 10 (Paragraphs 3.11 and 3.12)

Do you agree that the law in Scotland should be changed to allow same sex marriage?

Yes ☒
No ☐
Don't know ☐

Please give reasons for your answer

As discussed previously, we feel that to remove the existing constitutional discrimination it is best to offer four options to all eligible couples wishing to formalise their life-long partnership: religious marriage, civil marriage, religious civil partnership or secular civil partnership.

Question 11 (Paragraph 3.13)

Do you agree that religious bodies and celebrants should not be required to solemnise same sex marriage?

Yes ☐
No ☐
Don't know ☒

Please give reasons for your answer

See our response to Question 5.

Question 12 (Paragraphs 3.14 to 3.18)

Do you agree with the introduction of same-sex **civil** marriage only?

Yes ☐
No ☒
Don't know ☐

Please give reasons for your answer

This proposal would not represent a significant step forward from the current situation, and would continue to deny religious freedom in marriage to same-sex couples.

Question 13 (Paragraph 3.19)

Do you agree with the introduction of same-sex marriage, **both** religious and civil?

Yes ☒
No ☐
Don't know ☐

Please give reasons for your answer

This proposal would bring the choices available to same-sex couples in line with those for mixed-sex couples and is therefore welcomed. We also welcome the beneficial effect this would have on transgender equality, with trans people no longer needing to divorce in order to obtain a Gender Recognition Certificate.

Question 14 (Paragraphs 3.23 and 3.24)

Do you agree that religious bodies should not be required to solemnise same sex marriage?

Yes ☐
No ☐
Don't know ☒

Please give reasons for your answer

See our response to Question 5.

Question 15 (Paragraphs 3.25 and 3.26)

Do you consider that religious celebrants should not be allowed to solemnise same sex marriages if their religious body has decided against solemnising same sex marriage?

Yes ☐
No ☒
Don't know ☐

Please give reasons for your answer

See our response to Question 6.

Question 16 (Paragraphs 3.27 and 3.28)

Do you agree that individual religious celebrants should not be required to solemnise same sex marriage?

Yes ☐
No ☐
Don't know ☒

Please give reasons for your answer

See our response to Question 7.

Question 17 (Paragraphs 3.29 to 3.33)

Which of the options do you favour to ensure that religious bodies and celebrants do not have to solemnise same sex marriage against their will?

Do you favour:
Option 1 ☐
Option 2 ☐
Neither ☒
Don't know ☐

Please give reasons for your answer and if you have another option, please describe it.

See our response to Question 8.

Question 18 (Paragraphs 3.34 to 3.39)

Religious bodies may not wish their premises to be used to solemnise same sex marriage. Do you agree that no legislative provision is required to ensure religious premises cannot be used against the wishes of the relevant religious body?

Yes ☒
No ☐
Don't know ☐

Please give reasons for your answer

See our response to Question 9.

Question 19 (Paragraph 3.41)

If Scotland should introduce same-sex marriage, do you consider that civil partnerships should remain available?

Yes ☒
No ☐
Don't know ☐

Please give reasons for your answer

Not only should they remain available, they should also be made available to mixed-sex couples. As stated in our response to Question 1, couples wishing to make a life-long commitment have varying views about the form they wish this to take. Some do not identify with the concept of 'marriage', viewing it as an outmoded concept which has historically reinforced heterosexual supremacy, gender stereotyping and unequal power relations. Some of those who feel this way may be people of faith. They should therefore have the option to access a legally binding ceremony which reflects their views on both the structure and the religious element of a life-long partnership.

Question 20 (Paragraph 4.19)

Do you have any other comments?

Yes ☒
No ☐

We are particularly interested in your views on:

- potential implications of the proposals for transgender people (paragraph 3.42)
- possible transitional arrangements (paragraphs 3.43 and 3.44);
- recognition of Scottish same sex marriages elsewhere (paragraphs 3.45 to 3.49);
- any comments on forced marriage (paragraphs 3.51 and 3.52)
- any comments on sham marriage (paragraph 3.53)
- potential financial implications (paragraphs 4.01 to 4.08);
- potential equality implications (paragraphs 4.09 to 4.14).

In terms of potential equality implications, we would like to reinforce the point made earlier in this response that the current system perpetuates discrimination and therefore goes against the grain of the inclusive Scottish society the Scottish Government aims to foster. We would welcome all possible efforts by the Scottish Government to ensure that the new options introduced by this legislation are legally recognised as widely as possible, in the UK and abroad. We would like to raise another point: under the current

Scots marriage law two persons can only be married if the marriage would be regarded as valid in any foreign country to which either party belongs. This section would have to be amended to ensure that individuals whose marriage would not be permitted in a foreign country on the grounds that it is between a same-sex couple are not discriminated against. Failure to do this could result in a combined negative racial and sexual orientation equality impact.

Finally, CRER would like to note that the inequality and prejudice experienced by LGBT people (including those from ethnic minority backgrounds) remains a significant barrier to overall progress on equality for all.