

Equality Bill

Employment by churches and religious organisations

Just as political parties have the freedom to employ only card-carrying members of the party, churches and religious organisations want to require that their staff personally share the same faith and live it out in their lives. Exceptions to discrimination law currently largely allow for this, providing essential religious freedom. However, this freedom is coming under attack.

The Employment Equality (Sexual Orientation) Regulations 2003 currently allow an employer to apply a requirement related to sexual orientation if the employment is “for purposes of an organised religion”.¹ This has allowed churches and other religious organisations to retain their ethos. But the Equality Bill introduces a new narrow definition of “for purposes of an organised religion”. To qualify for the new organised religion definition under schedule 9, paragraph 2(8) of the Bill, the employment must wholly or mainly involve leading worship, or promoting or explaining doctrine.

But many ministers of religion will not spend their time wholly or mainly leading worship or teaching doctrine. There are many administrative and pastoral elements to the role of minister of a church which simply do not seem to have been considered in the drafting of the legislation. The new definition could therefore see churches sued for refusing a minister who commits adultery or who has a homosexual relationship. The same exemption (and therefore the same narrower definition) also covers sex discrimination law, therefore outlawing a male-only clergy policy.²

The Church of England has called paragraph 2(8) a “substantial narrowing” of church exemptions without any prior consultation or warning for Christian groups, while the Roman Catholic Church has accused the Government of failing to understand the nature of religious life.³

The Explanatory Notes to the Bill as introduced in the House of Commons made it clear that this exemption “would not apply to a requirement that a church youth worker or accountant be heterosexual”. The notes have been revised and now state: “This exception is unlikely to permit a requirement that a church youth worker who primarily organises sporting activities is celibate if they are gay, but may apply if the youth worker mainly teaches Bible classes.”

Such an approach entirely fails to appreciate the nature of churches and how they organise themselves. As the Fellowship of Independent Evangelical Churches (FIEC) has pointed out, churches must be permitted to employ people in key roles who share their ethos, otherwise “their ability to defend, uphold and advocate the principles and practices of the faith will be seriously undermined”.⁴

The example of a youth worker used in the Explanatory Notes is ill-considered. As a church employee, a youth worker is a representative of the church in all he does and his conduct in every respect must live up to the church’s teaching. Churches have an ethos which would be entirely undermined by employing someone living a lifestyle that did not match up to the biblical beliefs of the church. The Bill must recognise that churches need to protect their ethos. Churches want to keep the freedom in law to continue to appoint according to their faith.

The Government maintains that the exception is not narrowed by the Equality Bill. In Public Bill Committee the Solicitor-General, Vera Baird MP, said: “contrary to what has been suggested, the new definition does not narrow the scope of the existing exceptions.”⁵ Yet it has emerged from a reasoned opinion of the European Commission that the Government has told the Commission that the Equality Bill will reduce the scope for religious organisations to employ staff whose lifestyle is compatible with the organisation’s ethos. After raising the concern that the UK employment exemptions are too broad to be compatible with the 2000 Employment Directive, the Commission’s opinion states: “The UK Government has informed the Commission that the new Equality Bill currently under discussion before the UK Parliament will amend this aspect of the law and bring UK law into line with the Directive.”⁶

Clearly, if the Government has told the Commission that the Equality Bill will narrow the existing law, this is at odds with its public statements that the Bill does not narrow the law.

The Christian Institute
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¹ Employment Equality (Sexual Orientation) Regulations 2003, Regulation 7(3)

² Briefing note from the Catholic Bishops’ Conference on Equality Bill Lords 2nd Reading, December 2009

³ *Christian Today*, 23 May 2009, see <http://www.christiantoday.com/article/anger.over.governments.gay.employment.legislation/23423.htm> as at 9 December 2009; Memorandum submitted by Catholic Bishops’ Conference of England and Wales (E14), House of Commons, Public Bill Committee on the Equality Bill, Session 2008-2009, para. 5

⁴ Submission on The Equality Bill, The Fellowship of Independent Evangelical Churches, 19 October 2009

⁵ House of Commons, Hansard, Public Bill Committee, 23 June 2009, col. 454

⁶ Commission of the European Communities, Reasoned Opinion, RO 226 EC/cases other than failure to notify measures, 20 November 2009, para. 19