

Summary of the opinion

James Dingemans QC was asked to consider the implications of the Bill for religious freedoms. The main conclusions are as follows:

Disclosure

- There are many legitimate circumstances [para 21] where one Church leader would need to disclose a transsexual's birth sex to another leader. Under the Bill this is made unlawful unless the individual consents.
- Criminalising Church leaders would 'infringe' their religious rights and freedoms: "Their ability to project their message about beliefs in relation to transsexualism would be effectively removed." Under the Bill pension companies will be protected, but religious organisations will not [para 22].

Litigation against religious bodies

- *Sex Discrimination Act (SDA)* - there is "the prospect of divisive and costly litigation" against Churches using the SDA [para 28].
- *The Human Rights Act* could lead to the decisions of C of E ministers on baptism or confirmation being brought before the secular courts [para 29].

Ultimately although such litigation should fail, there are lengthy court cases ahead for Churches [para 30] and the Bill gives scope for litigation against individual Churches which "is likely to be divisive, costly and of benefit only to the lawyers." [para 32]

Marriage

The Bill permits a member of the Church of England clergy to refuse to conduct a marriage involving a transsexual. There is some legal controversy as to whether a person residing in a parish can insist on having a marriage celebrated in the parish Church. There could therefore be complicated legal arguments in court if a C of E parish Church did not want to hold a transsexual wedding [paras 25-26].

Article 9

Article 9 of the European Convention on Human Rights (ECHR), as enshrined in the Human Rights Act 1998, provides for an unqualified right to freedom of thought, conscience and religion. ECHR law establishes the following principles:

1. Religious rights have a 'primordial place' in democratic society and the 'pluralism indissociable' from democratic society depends on religious rights [para 17.1];
2. there is an increasing burden on Parliament to protect religious views [para 17.2];
3. any State interference with the right of freedom of association for religion would be difficult to justify [para 17.3].

Christian opposition to transsexual lifestyles, cogently argued, is a religious belief protected by Article 9 [para 18]. Religious beliefs are already protected by exemptions from several other pieces of legislation [paras 19.1-19.4].