

Civil partnerships on religious premises

Consultation response of The Christian Institute

Introduction

The Christian Institute is a non-denominational charity established for the promotion of the Christian faith in the UK and elsewhere. We have 29,000 supporters throughout the UK, including over 3,800 churches and church ministers from almost all the Christian denominations.

We hold traditional, mainstream Christian beliefs about marriage, sexual ethics and the sanctity of human life from conception. A major focus of our work over many years has been to protect religious liberty. We frequently provide advice and assistance to Christians who have been discriminated against because of their faith.

Before answering the relevant questions, we wish to make some general points about the consultation's proposed scheme for allowing civil partnership registrations in churches.

We believe the proposals are unworkable and by changing the law the Government is opening up churches to the possibility of legal action. The proposals fail to address the extremely complex issues surrounding the ownership of religious premises. The scheme should not be administered by local authorities because they have insufficient expertise to assess the very varied organisational structures of churches in determining whether 'consent' has been granted or deciding issues of property ownership. Moreover, the Christian community has little confidence in some local authorities to act fairly.

Implementation

It should be recognised that the coalition Government is under no obligation to implement Section 202 of the Equality Act 2010, which was passed under the previous administration. For example, Ministers have said very publicly that Section 1 of the same Act will not be brought into force (the "public sector duty regarding socio-economic inequalities").

Furthermore, there was insufficient consideration of Section 202 in Parliament, with the House of Lords debate taking place late at night when most Peers were absent. It is very concerning that in spite of this lack of scrutiny the Government is pressing ahead in such a hurried way. Ministers intend to bring the plans into operation by the end of this year. We understand that there will be no consultation on the Regulations beforehand. This means churches will not be consulted on the actual legal wording upon which their religious liberty will depend. Many will be alarmed by this.

Inconsistency with civil marriage

During the passage of the Civil Partnership Act in 2004, the then Government gave repeated reassurances that civil partnerships would reflect civil marriage and said they would be "entirely secular".¹ The proposals under Section 202 of the Equality Act depart from that clear undertaking.

Section 202 came as a result of a backbench amendment. Initially the then Government strongly resisted the idea, saying it was "not a workable solution to this issue. Amending the Civil Partnership Act in this way could lead to inconsistencies with civil marriage, have an unexplored impact on devolved Administrations, and lead to confusion on what is permitted and what is required."²

¹ House of Lords, Hansard, 12 May 2004, col. 139GC; House of Commons, Hansard, Public Bill Committee, 21 October 2004, col. 101

² House of Lords, Hansard, 25 January 2010, col. 1208

Clearly the then Government was very concerned that a permissive amendment could be interpreted as a requirement, which we consider below. But it also objected because of the uncertainty the change would leave over the position of civil marriage, which by law must be entirely secular.

The Government was not alone in this concern. Bishop Michael Scott-Joynt, then Bishop of Winchester, warned in the House of Lords that the amendment would “blur the distinction between civil and religious marriage” and “also blur the characteristics of the civil partnership as distinct from marriage”.³

Preventing permission becoming coercion

The consultation paper proposes an ‘opt-in’ system, saying the scheme will be “entirely voluntary”.⁴ We accept this is what Ministers are aiming for.

However, there are two main areas of concern in response to the proposed scheme:

1. can it prevent litigation against clergy or churches who don’t agree with civil partnerships, and
2. can it prevent clergy who do agree with civil partnerships going ahead in defiance of their denomination?

As mentioned above, the previous Government expressed concern that the amendment might lead to confusion about what is permitted and what is required, and we believe that this is a danger inherent in the proposals.

We have not responded to all the questions. At times, the questions asked seem too related to be separated without substantial repetition, and as such we respond to several questions at once. Answers to some questions will refer to longer responses given to other questions.

Question 1: Do you have any comments on our proposals for requiring faith groups’ consent for an application to a local authority for a religious premises to be used for the registration of civil partnerships?

Question 2: Do you have any comments on the three ways in which decisions can be taken about allowing civil partnerships to be registered on religious premises? Do they cover the circumstances of all faith groups?

As the consultation paper acknowledges, there are many thousands of religious bodies in the country with hugely varied structures and procedures: around 30,000 registered places of worship belonging to 40 different ‘faith groups’, not including the Church of England or the Church in Wales.⁵ We do not believe that any scheme can adequately account for this reality.

Some issues that immediately arise include:

- In a church denomination with mixed views on homosexual conduct how can the Government be sure that one wing will not give ‘consent’ for the denomination as a whole, even though such a decision may be unrepresentative?
- What if a group put forward an application claiming to be an independent group which did not require consent from a wider body, when in fact that was not the case?
- Can local authority registrars be reasonably expected to have a sufficient grasp of all the varied and intricate systems and hierarchies of religious bodies in Britain so as to be able to handle such controversies?

³ *Ibid*, col. 1202

⁴ *Civil Partnerships on Religious Premises: A Consultation*, Government Equalities Office, March 2011, page 5

⁵ *Ibid*, page 47

- What will happen if local authority registrars unknowingly (or otherwise) approve civil partnership applications when in fact there has been no proper consent? Will the local authority face appropriate penalties?
- If a civil partnership was to take place in such circumstances would it automatically be rendered legally invalid and a new registration have to take place?

As an illustration of some of these points, it is helpful to consider how the proposals might affect the Church of England.

Church of England

So far as the Church of England is concerned, the Archbishop of Canterbury has said publicly and firmly that the CofE will not give its consent for civil partnerships to be registered on its premises.⁶ As such, the first criterion of consent from the faith group will not be in place for CofE churches. This may not mean, however, that individual Church of England churches will be free from legal challenge.

There is the question of which body the CofE will nominate to give or withhold its consent. It will have to name the responsible body so that it can be listed in the Government's regulations. Will it be the Archbishops' Council? Or the General Synod?

Take the latter example: inevitably there would be debates on whether the Synod should adopt a neutral position and allow churches that wish to host civil partnership registrations to do so. What if the House of Clergy, for example, supported such a motion despite pleas from the Archbishop of Canterbury? It is not hard to imagine a local authority registrar, through ignorance or otherwise, accepting a copy of the motion as evidence of the CofE as a 'faith group' giving consent. A civil partnership could take place before this false authorisation was challenged. This raises a key point, which is not properly addressed in the consultation paper: exactly what will constitute sufficient evidence of the consent of the faith group? How diligently will local authorities investigate the validity of the evidence provided?

Certain churches within the Church of England, known as Royal Peculiars, are effectively independent and outside the jurisdiction of diocesan bishops. A liberal minister of a Royal Peculiar may convince a local authority registrar that he is equivalent to an independent church, so does not need the consent of the Archbishops' Council or General Synod, and gain approval to carry out rogue registrations. Consecrated chapels on university premises, in hospitals, in military establishments or on historic sites may make similar claims. If a civil partnership registration went ahead in such circumstances the integrity of the Church of England as a denomination would be undermined.

The Church of England may at some point change its position and leave the decision to individual bishops, ministers or churches. However, this would then introduce the complexities of the 'ownership' and control of Church of England property, which we address below.

⁶ *The Sunday Telegraph*, 27 February 2011; *Daily Mail*, 28 February 2011

Question 4: Do you have any comments on our proposals for ensuring that faith groups' consent is demonstrated in an application to the local authority for a religious premises to be approved as a place where civil partnerships may be registered?

Question 5: Do you agree that, taken together, the arrangements we propose will prevent religious premises being approved as places where civil partnerships may be registered if the faith group concerned has not consented to it?

In terms of individual religious premises seeking registration under the scheme much will hinge on who is considered to be the responsible "owner", "trustee" or "proprietor" of the property. How will the Government address the fact that some Christian congregations meet in church buildings that they do not ultimately control?

A major issue, which the consultation fails to address, is that many independent churches actually operate in buildings they do not own, or have Trustees from a separate church grouping (having perhaps left a denomination decades or even a century ago). Similarly, it can be almost impossible to determine 'ownership' of Church of England premises – e.g. the 'owners' could be said to be clergy with freehold, the Diocese, or the Patrons. There are evangelical ministers in denominations which have to some extent endorsed homosexual conduct and which own the church property. Officials for such a denomination may seek to register all its premises, leaving evangelicals in an impossible position: effectively the Government's proposals would open up deep internal divisions in the denomination. The secular courts could end up adjudicating on the theological issues involved.

Clearly, the Government cannot be held accountable for the internal differences within any denomination. However, its legal scheme must provide a framework which accounts for the myriad of different practical situations in which individuals find themselves and fully protects the right of conscience of church leaders who oppose civil partnerships. For the Government to fail to give such churches proper legal protection would be to take sides in the argument.

Moreover, it is absolutely essential that the legislation is 'future proof', i.e. that the legal framework not only works at present but will be able to effectively protect religious liberty in years to come. The Church of England is currently planning to withhold consent for the use of its premises. However, if it changed to a neutral position then the thorny issue of ownership of its property would become crucial.

The legal arrangements for CofE premises are highly complex and it is very difficult to ascertain which body or individual could properly make such an application. Local CofE buildings can be said variously to be under the control of individual clergy, bishops, Diocesan Boards of Finance, Patrons, or Trustees of Proprietary Chapels. Whether individual clergy have the freehold, or otherwise, would also be crucial.

In the future it is possible that a bishop or Diocesan Board of Finance could decide to register all churches in their diocese. It is unclear from the consultation document where this would leave individual evangelical clergy or congregations who do not agree with civil partnerships. Or decisions may be made in future by individual churches. If an evangelical clergyman moved to a church which had been registered by a previous incumbent he could find himself vulnerable to legal challenge.

It is important to note that the consultation paper mentions the possibility of a faith group reversing a decision to give consent, but does not appear to consider how, in practice, proprietors or Trustees of particular premises might go about having their approved status removed. Or what would be the position of an evangelical minister who wants to deregister his church if the individual who previously made the application objects to him doing so (e.g. the Patron or Bishop)?

Increasingly denominations are sharing premises and such church buildings can be jointly owned. If one denomination gave its consent but the other did not, or if the Trustees were at odds, would the local authority be able to approve the application or not?

There is a great deal of concern that allowing civil partnerships to be registered in churches will inevitably lead to legal actions against those who refuse to participate. The consultation document fails to engage with this issue as it relates to property ownership for clergy in denominations with mixed views on homosexual conduct, or for congregations meeting in church premises with Trustees who do not share their views. If a church is registered and the minister or congregation refuses to host a civil partnership they are vulnerable to legal action by the homosexual couple. No safeguards are proposed in the consultation document. The issue of legal actions against churches is addressed below.

Question 13: Do you agree that religious premises should be able to keep their religious symbols, decorations and objects in place while civil partnerships are registered?

Question 14: Do you agree with our proposals for arrangements for religious services following civil partnership registrations?

No religious symbolism or ceremony is permitted for civil marriage yet clearly it is impossible to conduct civil partnership registrations in a church without religious symbols and objects being present. This highlights the inconsistency created with the law on civil marriage.

Question 15: Do you agree with our proposals for the process for applying for a religious premises to be approved for civil partnership registrations?

We do not believe that local authorities are suitable bodies to adjudicate on the important issues at stake. The complexities outlined above regarding the organisation of churches and the ownership and control of property are outside local authorities' area of expertise.

It is irresponsible for the Government to rely on a system which was designed as a purely administrative scheme for assessing whether or not a building is suitable to host a legal marriage. Homosexual relationships are a highly controversial issue, both within some religious groups and in wider society. There are individual activists who will look for opportunities to push the barriers and this should not be ignored.

The advertising requirement mentioned in paragraph 3.28 is wholly inadequate as a protection for churches. If the proprietor or Trustees of religious premises apply for approved premises status for civil partnership registrations, it could be highly controversial. An advertisement in the local paper and a three week window for lodging objections will not allow proper public scrutiny. Such adverts are easily missed by the public, even by regular readers of a local newspaper.

As set out in more detail in the response to Question 22 below, many religious people do not have much confidence in local authorities. Christians in particular have seen many local councils take decisions which go against their core beliefs, whether in decisions concerning funding for social care, sidelining Christians from adoption and fostering, or in the regular incidences of Christmas celebrations being compromised in the name of 'equality'.

Question 19: Do you have any comments on the proposals for training and guidance?

Given the organisational and property issues outlined extensively above, it is inexplicable that the Impact Assessment says one hour will be sufficient for registrars to familiarise themselves with how to administer the new law (page 57).

Question 22: Does this approach sufficiently protect faith groups and ministers of religion, or is additional protection needed?

While we acknowledge the Government's sincere intention that the proposed scheme should be entirely voluntary, it is understandable that Christians fear this will not turn out to be the case. For example, when Stonewall's Chief Executive, Ben Summerskill, announced its campaign for this legal change, he said: "Right now, faiths shouldn't be forced to hold civil partnerships, although in ten or 20 years, that may change."⁷

Christians in Britain are extremely concerned at the erosion of their religious liberty that has taken place in recent years. A recent poll found that 77% of churchgoers believe the marginalisation of Christians in public is increasing.⁸

These proposals come at a time when there is a genuine and widespread concern that Christian religious freedom is under threat in Britain. Legal changes we were told would be purely permissive have soon become coercive. It was only in 2005 that homosexual adoption became legal: within three years religious adoption agencies were ordered to change their beliefs or close.

Christians are apprehensive that the new proposals will open the door for litigation against churches with orthodox beliefs on sexual ethics. The consultation document is not able to provide reassurance, admitting that the proposals bring "a risk of additional legal challenges" in the future, and saying: "Given the controversies surrounding sexual orientation and religion and belief, such challenges cannot be excluded."⁹ It talks elsewhere of: "Pressure on... faith groups and individual places of worship".¹⁰ If a church was successfully sued in the future it is possible a precedent could be set compelling many other churches to participate in the scheme. Even if legal actions against churches were to fail, the expense and pressure involved would cause great harm to those involved. It is entirely possible that a small, independent church would simply give in under the threat of litigation as it would be unable to afford to mount a defence in court.

Some mixed denominations which have to some extent endorsed homosexuality may consent to their premises being used. They may also own church buildings in the denomination and so register them with the relevant local authority in each area. This is much more likely to open up ministers or churches in such denominations who oppose civil partnerships to successful hostile legal action.

If a denomination decided to adopt a 'neutral' policy and allow its associated churches to make their own decision, a host of problems could arise. It is entirely possible that the Trustees of, for example, a Baptist chapel building could take an entirely different position to the minister. Such Trustees could try to register the premises in defiance of a minister who objects in principle to civil partnerships. Some independent churches still have their Trust deed with their former denomination even though they left decades (or over a century) ago. Such churches could find themselves in considerable difficulty if the Trustees of their building decided in the future to support civil partnerships.

⁷ *Pink News*, 18 November 2009, see <http://www.pinknews.co.uk/2009/11/18/exclusive-stonewall-to-fight-for-civil-partnerships-to-be-held-in-churches/> as at 23 June 2011

⁸ *Premier Radio CPanel poll December 2010*, ComRes, Table 7, see <http://www.comres.co.uk/page165715812.aspx> as at 23 June 2011

⁹ Government Equalities Office, *Op cit*, page 78

¹⁰ *Ibid*, page 62

The Human Rights Act and the Equality Act will certainly provide fertile legal territory for those seeking to mount hostile litigation against churches with whom they disagree over homosexuality. In addition, Church of England clergy are registrars in their own right and the Church of England is under an obligation to marry all-comers within the parish, though this obligation is subject to canon law. If civil partnerships are ever permitted in CofE churches then there could be a legal argument over whether the obligation would extend to them.

The main reason churches are not already being sued to force them to conduct civil partnerships is because it is against the law for them to do so. It is unlawful for the registration to take place on religious premises. Changing the law opens up churches to legal action. Section 202 itself does not provide adequate legal protection as subsection 4 ("nothing in this Act places an obligation on religious organisations to host civil partnerships if they do not wish to do so") only applies to the Civil Partnership Act, not discrimination or human rights legislation.

The role of local authorities

Christians are alarmed that local authorities have been chosen to administer the scheme. The consultation paper addresses the issue of 'consent' for the use of religious premises to perform civil partnership registrations, including identifying which religious body or person has the capacity to give consent. Yet local authority registrars cannot be expected to be sufficiently familiar with the administrative/religious structure of the multiple religious groups in Britain to properly determine this. The administrative approach under which local authorities assess the suitability of a hotel for a wedding cannot be applied to an issue of such complexity and controversy as that proposed.

Moreover, there are many cases of local authorities showing hostility to Christians, for example:¹¹

- Christian registrar Lillian Ladele was forced out of her job by Islington Council after she refused to carry out civil partnership registrations. This was despite the fact that the Council had been able to provide civil partnerships to those requesting them without her needing to be involved.
- A Christian foster carer was struck off by Gateshead Council in 2008 after a Muslim girl in her care decided to convert to Christianity. The Council's decision was later quashed by a court.
- Norfolk County Council warned a Christian-run shelter for the homeless in May 2005 that it would lose £150,000 of funding unless it stopped saying grace at mealtimes and putting out Bibles for use by guests.
- In January 2011 Sedgemoor District Council refused a grant for Newtown King's Church to run a children's holiday club because of the group's overarching aim to 'glorify God' in all its activities.
- Many local councils, including Oxford City Council, Rochdale Borough Council and Tower Hamlets Council, have banned, modified or restricted their Christmas celebrations.
- In February 2007 Carlisle Council was forced to admit it had got the law wrong, after trying to stop street evangelist Keith Bullock handing out Christian leaflets in the city centre.¹²
- In a similar case, St Edmundsbury Borough Council tried to ban evangelist Brian Dee from handing out Christian tracts in the local marketplace in September 2008. The Council changed its mind after recognising Mr Dee's human right to religious freedom and freedom of expression.¹³

There is also a concern about the role local authorities' equal opportunities policies may play in this area. If a local authority has an equal opportunities policy which precludes discrimination on the grounds of sexual orientation, would it prevent them authorising an independent church for the purposes of marriages only and not civil partnerships? It is not difficult to imagine this scenario.

¹¹ *The Times*, 11 July 2008; *Mail Online*, 10 July 2010, see <http://www.dailymail.co.uk/news/article-1293635/Reinstated-foster-parent-struck-allowing-Muslim-girl-convert-Christianity.html> as at 23 June 2011; *Daily Mail*, 3 May 2005; *Western Daily Press*, 27 January 2011; *Oxford Mail*, 1 November 2008; *The Oxford Times*, 3 November 2008; *BBC News Online*, 21 August 2009, see <http://news.bbc.co.uk/1/hi/england/manchester/8214040.stm> as at 23 June 2011; *The Sun*, 21 August 2009; *The Daily Telegraph*, 29 August 2008

¹² The Christian Institute, Press Release, *Carlisle Council Admits it was Wrong to Stop Man Handing Out Christian Leaflets*, 9 February 2007

¹³ The Christian Institute, Press Release, *Council Backs Down Over Christian Leaflets*, 15 September 2008

Independent churches could find themselves being refused permission to perform marriages, because of their objection to also being registered for civil partnerships. The local authority could argue that allowing such a situation would be contrary to its equality policies.

Conclusion

Until now the state has not sanctioned any legal recognition of homosexual relationships in a church. If Section 202 is implemented as proposed it is likely there will be legal action against churches who disagree. By creating this situation the Government will effectively have taken sides on a highly controversial issue. The consultation paper also seems to imply the plans are the "first step" towards redefining marriage¹⁴, a move which would be deeply unpopular with the public.

It is not necessary to implement the plans outlined by the consultation document. Homosexual couples can obtain a civil partnership at any register office in the UK and of course liberal religious groups can hold 'services of blessing' if they choose.

The consultation paper makes two key admissions that show why the proposals should be dropped:

1. the scheme brings a "risk of legal challenge" against churches;¹⁵
2. "...the number of civil partnerships in a religious setting is likely to be small".¹⁶

The plans are not workable and fail to provide adequate safeguards. The Government is risking the religious freedom of many thousands of people by proceeding with a scheme for which there is little demand.

¹⁴ Government Equalities Office, *Op cit*, page 16

¹⁵ *Ibid*, page 78

¹⁶ *Ibid*, page 49