

Response to the Government consultation on civil partnerships on religious premises

23 June 2011, Adrian Vincent

The Government consultation document on implementing section 202 of the Equality Act 2010 to enable civil partnerships to be registered on religious premises is available here: http://www.equalities.gov.uk/equality_act_2010/civil_partnership_consultation.aspx

The consultation closed on 23 June 2011.

Attached is the response to the consultation that I submitted.

The Church of England published its response to the consultation on 23 June on its website here: <http://www.churchofengland.org/media-centre/news/2011/06/registration-of-civil-partnerships-in-religious-premises.aspx> (it was published on the day of the deadline and I did not have the chance to read it prior to writing and submitting my own response).

PROFORMA FOR CIVIL PARTNERSHIPS CONSULTATION RESPONSES

The consultation closes on 23 June 2011. Please let us have your response by that date.

When responding, it would be helpful if you could provide the following information.

Please fill in your name and address, or that of your organisation if relevant. You may withhold this information if you wish, but we will be unable to add your details to our database for future consultation exercises.

Contact details:

Please supply details of who has completed this response.

Response completed by (name):

Position in organisation (if appropriate):

Name of organisation (if appropriate):

Address:

Contact phone number:

Contact e-mail address:

Date:

Confidentiality

Under the Code of Practice on Open Government, any response will be made available to the public on request, unless respondents indicate that they wish their views to remain confidential. If you wish your response to remain confidential, please tick this box and say why. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

I would like my response to remain confidential (please tick if appropriate):

Please say why

You or your organisation

Q(i) In what capacity are you responding?

As an individual (if so, please go to Q1 in the main comments section)

X

On behalf of an organisation (if so, please go to Q(ii) below)

Other (please specify)

Q(ii) Is your organisation

(please tick the boxes that apply to your organisation)

A faith group or a religion or belief organisation

An lesbian, gay and bisexual (LGB) group or body

An equality group or body

A local authority or local authority organisation

An owner or manager of premises approved for civil partnership registrations

A professional, trade union or staff association

A legal organisation

An statutory body

Other – please specify

Note:

In addition to the completed proforma, you can also send other supporting information if you so wish.

Completed forms should be e-mailed to the following address:-

civilpartnerships@geo.gsi.gov.uk

If you are posting the form please send to:-

Civil Partnerships Consultation Responses
Government Equalities Office
Discrimination Law Team
1st Floor Fry-North West Quarter
2 Marsham Street
London SW1P 4DF

Thank you for completing this response form.

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?

Please place a cross in the appropriate box

Yes No

Comments

I do not agree that the registration of civil partnerships should be allowed to take place on religious premises. It would change the character and nature of the registration of civil partnerships.

Paragraphs 2.9 and 3.10 of the consultation refer to “the entirely secular nature of the proceedings”, but this would no longer be the case if they were to take place in a religious premises in the context of a religious service. The spiritual setting changes the nature and character of what takes place within that setting. (For example, if a church is to be used for entirely secular activities, such as when a church is declared redundant and converted into offices, it is deconsecrated. Otherwise, all activities that go on in a church come under its ‘spiritual umbrella’ and the nature of them is altered by it). The proposed change would also compromise the explicitly secular role of local authority registrars.

It is regrettable that this consultation does not include a question inviting views on whether civil partnerships should be allowed to take place on religious premises, but only asks how they should be permitted.

Page 55 of the consultation document states:

“Option 1 – Do nothing

The do nothing option would entail not commencing section 202 of the Equality Act 2010 and not making regulations for an opt-in approach and approval of premises. This option has been rejected because it would disregard the will of Parliament on a free vote..”

Given that the provision was a late amendment by Lord Alli that was passed without prior consultation, it would not be unreasonable for the new Government to take a step back and consult, with the option of amending the legislation.

I share the view set out in paragraph 4 of, *Civil Partnerships- A pastoral statement from the House of Bishops of the Church of England*, July 2005

<http://www.churchofengland.org/media-centre/news/2005/07/pr5605.aspx>

“the Church of England teaches that “sexual intercourse, as an expression of faithful intimacy, properly belongs within marriage exclusively” (*Marriage: a teaching document of the House of Bishops*, 1999). Sexual relationships

outside marriage, whether heterosexual or between people of the same sex, are regarded as falling short of God's purposes for human beings."

The Government response to the consultation that introduced Civil Partnerships (*Responses to Civil Partnership: A framework for the legal recognition of same-sex couples*, November 2003') stated that a civil partnership was for the purpose of giving legal rights to same-sex partners. It was not to be the same as marriage and was to be a civil, not religious action: "The Government has no plans to allow same-sex couples to marry. The proposals are for an entirely new legal status of civil partnership." (page 14).

Consequently, civil partnerships and marriage have been able to co-exist, without unduly restricting the freedom of belief of those who take a traditional view of marriage.

However, the Government's March 2011 action plan '*Working for Lesbian, Gay, Bisexual and Transgender Equality: Moving Forward*'

<http://www.equalities.gov.uk/pdf/action%20plan.pdf> :

- opposes those who hold "outdated prejudices" (page 10)
 - it is not explicitly stated that this description includes everyone who holds the traditional Christian view of sexual ethics, but that is the implication.
- "will work ..on how legislation can develop" (page 10)
 - not on whether it should develop, which implies a one-way direction towards the introduction of gay marriage.

The consultation document repeats this statement in several places, such as the quotation on page 81, "The implementation of this provision is the first part of our work on the next steps for civil partnerships as laid out in the LGB&T action plan. Having listened to stakeholders it is clear from many that there is a desire to move towards equal civil marriage and partnerships. We will consult further on how legislation can develop, working with all those who have an interest in this area."

The Government does not allow civil marriages to take place in religious premises. This makes clear that the involvement of the local authority registrar is for civil legal purposes. To allow civil partnerships to take place in religious premises, but not civil marriages, is not only discriminatory to civil marriages (an argument the consultation document recognises on page 83, but dismisses), it implies that the civil partnership registration itself, and the local authority registrar's role in that may be of a religious character. This is because an event taking place in a religious premises, with a religious ceremony before or after it, is imbued with a religious character.

Having said the above, in answer to the specific question, if the Government proceeds to allow civil partnerships on religious premises, I agree that a faith groups' consent must be required before any of its premises is approved for this purpose.

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?

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?

Please place a cross in the appropriate box

Yes No

Comments

I do not agree that the registration of civil partnerships should be allowed to take place on religious premises. However, if provisions are made there may be difficulties in practice regarding the three ways in which decisions can be taken. This is because there is not a clear dividing line between “faith groups” and an “individual place of worship where consent is not required”. See below.

Do they cover the circumstances of all faith groups?

Please place a cross in the appropriate box

Yes No Unsure

Please explain why

They would not cover the circumstances of some ‘umbrella’ church organisations. It would be a matter of subjective judgment by the local authority or government to determine whether such an organisation would be classed as faith group who can make a single decision for the churches in their network.

For example, the ‘umbrella’ church grouping New Frontiers. Their website http://www.newfrontierstogether.org/Groups/99080/Newfrontiers/About_Us/FAQs/Newfrontiers/Newfrontiers.aspx explains:

“Newfrontiers is a family of churches that have chosen to work together under apostolic ministry. In this sense we work relationally with churches that hold the same vision and values. Those churches relating to Newfrontiers have chosen to do so following a time of building personal relationships between the leaders of the church and apostolic ministry.”

A representative of Newfrontiers might seek to persuade the local authority that Newfrontiers is a faith group, for which they represent the decision making body and that no church within the Newfrontier network should be permitted to be a venue for civil partnerships. However, one of those individual churches in that network, might argue that they should be classed as an “individual place of worship where consent is not required” and argue that Newfrontiers is a simply group to which they voluntarily associate themselves, in the same way that the Evangelical Alliance represents the views of many Christian churches who are affiliated to them, but who do not constitute a ‘faith group’ in their own right (or do they?).

Local authorities have neither the authority nor the theological expertise to make such judgment calls. If the local authority decided that Newfrontiers was a faith group

and therefore the application from one of the churches in the network must be refused, then that individual church may seek a judicial review of the local authority. If the local authority decided that the individual church was autonomous, then the Newfrontiers organisation might seek a judicial review of the local authority.

Question 3: Would your faith group want to have a specified body or person to take the decision whether or not to consent to civil partnership registrations on its premises? If so, what or who would this body or person be?

Would your faith group want to have a specified body or person to take the decision whether or not to consent to civil partnership registrations on its premises?

Please place a cross in the appropriate box

Yes No Not sure

Please explain why

Although I am a member of the Church of England's General Synod, which may be the specified body to take such a decision (or the House of Bishops, or the Archbishops' Council), this is an individual submission and I cannot speak for the Church of England or the General Synod as a whole.

Who would this body or person be?

Please give details

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?

Please place a cross in the appropriate box

Yes No

Comments

Page 24 of the consultation says "The applicant would declare that no consent to the application was required, either because it was an independent autonomous place of worship". However, as explained in the answer to Question 3, there are likely to be occasions where there is a dispute over whether the applicant is indeed an autonomous place of worship, or is actually under the authority of a specified body which had not given general consent in respect of all its premises.

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?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why

For the reasons set out above in answer to questions 3 and 4 – there are likely to be disputes, for which local authorities and Government are not theologically qualified to decide upon and do not have the authority on which to adjudicate.

Question 6: Do you have any comments on our proposals for enabling faith groups who had given consent to reverse that decision?

Please place a cross in the appropriate box

Yes No

Comments

I agree that if a faith group made a decision, they should also be free to reverse it.

Question 7: Do the arrangements proposed above cover all the premises which meet the definition of religious premises in the Civil Partnership Act 2004? If not, what types of religious premises are excluded?

Do the arrangements proposed above cover all the premises which meet the definition of religious premises in the Civil Partnership Act 2004?

Please place a cross in the appropriate box

Yes No Not sure

Comments

If not, what types of religious premises are excluded?

Please give details

Question 8: Do you have any other comments on our proposals for identifying religious premises that may be approved for hosting the registration of civil partnerships?

Please place a cross in the appropriate box

Yes No

Comments

Question 9: Do you agree with our proposals for enabling faith groups to decide who should be able to register civil partnerships of their premises? Do you believe further safeguards might be needed? If so, what might these be?

Do you agree with our proposals for enabling faith groups to decide who should be able to register civil partnerships of their premises?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why

The registration of civil partnerships should not be allowed to take place on religious premises. However, if they are permitted, I agree with the intention to give faith groups freedom in the choice of whom they permit to have a civil partnership on their premises. However, there would be practical difficulties to this. For example, paragraph 3.18 of the consultation suggests “This might include not making their premises available for the registration of a civil partnership of a couple of a different or no faith...”. Such decisions are likely to leave the faith group subject to large legal costs in defending judicial review actions taken by individuals against the faith group, on the grounds of discrimination. For example, a couple claiming that the faith group had incorrectly judged that they did not have faith and refused use of the premises, having previously judged that another couple of similar beliefs did have faith and for whom permission to use the premises had been granted.

Do you believe further safeguards might be needed?

Please place a cross in the appropriate box

Yes No Not sure

Comments

I do not think that it is possible to produce adequate safeguards. This is another reason why the registration of civil partnerships should not be allowed to take place on religious premises.

If so, what might these be?

Please give details

Question 10: Do you agree that religious premises should be open to the public while a civil partnership is registered?

Please place a cross in the appropriate box

Agree Disagree Not sure

Comments

The registration of civil partnerships should not be allowed to take place on religious premises. However, if they are permitted, they should be open to the public. This is a legal act which confers wide-ranging legal rights which affect wider society and therefore should be open to the public.

Question 11: Do you agree that religious premises should be subject to the same conditions that apply to secular approved premises about the layout of the building and the use of the room in which the civil partnership is registered before the registration takes place?

Please place a cross in the appropriate box

Agree Disagree Not sure

Comments

The registration of civil partnerships should not be allowed to take place on religious premises. However if they are, they should be subject to the same conditions, for health and safety reasons if nothing else.

Question 12: Might the requirements cause difficulties for particular faith groups who wish to opt in to the measure? How might these be resolved?

Might the requirements cause difficulties for particular faith groups who wish to opt in to the measure?

Please place a cross in the appropriate box

Yes No Not

sure

Comments

How might these be resolved?

Please give details

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?

Please place a cross in the appropriate box

Agree Disagree

Please explain why

The registration of civil partnerships should not be allowed to take place on religious premises. However if they are, it would be wrong to demand the removal of religious symbols in order to 'pretend' that it was not a religious building. Such an action would be deceitful and verging on sacrilegious.

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

Please place a cross in the appropriate box

Agree Disagree

Comments

Paragraph 3.25 of the consultation says, "We expect that the religious service will take place after the civil partnership registration to celebrate its formation." However, there are no regulations proposed to ensure this and nothing to stop there being a religious service before and after the civil partnership registration, which would imply that the registration was part of the religious service, further denying the Government's statement in paragraphs 2.9 and 3.10 that the registration would be "entirely secular". This would be impossible by the mere fact of taking place in a religious premises, but even more so when in the middle of or immediately preceding a religious service.

Furthermore, page 57 of the consultation envisages only two hours of training for registrars in the proposed change – consisting of reading a guidance document. This is inadequate in terms of the training needed for different religious buildings and

settings and knowing how to respond to attempts to compromise the “entirely secular” intentions of the proceedings.

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

Please place a cross in the appropriate box

Agree Disagree Not sure

Comments

The registration of civil partnerships should not be allowed to take place on religious premises. Paragraph 3.26 of the consultation which explains this question states, “Religious premises will be able to be approved only for civil partnerships, not civil marriage...” Civil marriages are presumably not permitted in religious premises because civil marriages are entirely secular. It is therefore inconsistent, and open to a charge of discrimination, to allow civil partnerships, which the Government claims are entirely secular, to be permitted in religious premises.

Question 16: What fee might need to be charged to enable local authorities to cover their costs?

Please give details

As explained in the answer to question 2, local authorities are likely to be subject to legal challenges. Therefore fees will need to be set at a sufficiently high level to cover potential legal fees to the local authority of defending judicial review claims.

Question 17: Do you agree that the local authority should be able to revoke the approval of a religious premises that ceased to meet the conditions on which it was granted?

Please place a cross in the appropriate box

Agree Disagree

Comments

Question 18: Do you have any comments on the proposals for keeping records of the location of religious approved premises?

Please place a cross in the appropriate box

Yes No

Comments

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

Please place a cross in the appropriate box

Yes No

Comments

As stated in the answer to Question 14, two hours of training is inadequate. Registrars would need training in the different religious traditions in the different religious premises, partly so as not to cause offence (for example, in some churches it is customary to bow towards the altar when crossing from one part of the church to the other), and partly so as know how to react when attempts are made to surround the registration with religious imagery and significance, which would compromise its secular character.

I also support the part of the response of the Christian Legal Centre which says on page 10:

“We are concerned that individual Registrars may find that the requirement to conduct Civil Partnerships on religious premises presents a severe moral conflict in light of their own Christian beliefs. A Registrar’s right to manifest their beliefs needs to be protected. We are adamant that their freedom of belief in this scenario should be catered for. We propose that Registrars are given a conscience opt-out, and are permitted to decline to officiate at Civil Partnerships in general, and also, specifically, at Civil Partnership ceremonies on religious premises. A failure to introduce a conscience opt-out, as a very minimum, would seriously restrict their freedom of belief and force them to make a choice between their faith and their continued employment. This is unacceptable.”

Question 20: Are there other administrative issues for which special arrangements may be required for religious premises? What might these arrangements be?

Are there other administrative issues for which special arrangements may be required for religious premises?

Please place a cross in the appropriate box

Yes No Not

sure

Comments

The registration of civil partnerships should not be allowed to take place on religious premises.

What might these arrangements be?

Please give details

Question 21: Do you have any other points or issues you wish to raise about enabling civil partnerships to be registered on the premises of faith groups who permit this?

Please place a cross in the appropriate box

Yes No

Comments

The registration of civil partnerships should not be allowed to take place on religious premises. I refer to my general comments in my answer to Question 1.

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

Please place a cross in the appropriate box

Yes No Not sure

Comments

The registration of civil partnerships should not be allowed to take place on religious premises. If it is permitted, as explained in my answer to Question 9 it will not protect ministers of religion from legal challenge. For example a decision by a minister of religion of a premises that is approved to for civil partnership registration to allow one couple to have a civil partnership registration but not another, would leave the minister of religion open to legal challenge by those who were refused. No additional legal protection could entirely exclude this possibility.

Question 23: Can you provide any evidence of the number of individuals in England and Wales who might wish to register their civil partnership on religious premises each year?

Please place a cross in the appropriate box

Yes No

Evidence

Question 24: Can you suggest whether or not specific religious premises, congregations or dominations will seek to make use of this provision? If you are responding on behalf of a faith group, is your faith group likely to allow civil partnerships to be registered on its premises?

Can you suggest whether or not specific religious premises, congregations or denominations will seek to make use of this provision

Please place a cross in the appropriate box

Yes No

Please give details

If you are responding on behalf of a faith group, is your faith group likely to allow civil partnerships to be registered on its premises?

Please place a cross in the appropriate box

Yes No

Please give details of your faith group

Question 25: Can you provide any additional evidence of the possible costs religious premises will incur when hosting a civil partnership, in addition to those discussed in the impact assessment?

Please place a cross in the appropriate box

Yes No

Evidence

There will be the additional costs of defending legal challenges, as set out in the answer to Question 9 above. However, this is not something that can be quantified in advance.

Question 26: Can you provide any further data or examples of costs and benefits which have not already been included in the Impact Assessment? Do you have any comments on the assumptions, approach or estimates we have used?

Can you provide any further data or examples of costs and benefits which have not already been included in the Impact Assessment?

Please place a cross in the appropriate box

Yes No

Please give details

The additional legal costs to local authorities and ministers of religion to judicial review actions, as set out in the answers to Questions 4 and 9 above.

Do you have any comments on the assumptions, approach or estimates we have used?

Please place a cross in the appropriate box

Yes No

Comments

The assumptions on the low cost of training are over-optimistic, as explained in the answer to Question 19 above.

Question 27: Can you provide any further information or views to help us calculate the economic benefits of this measure?

Please place a cross in the appropriate box

Yes No

Please give details

There are no economic benefits to allowing the registration of a civil partnership to take place on religious premises. The economic benefits are in the nature of the registration of civil partnerships themselves, which confer legal rights to financial benefits to the civil partners. The economic benefits have already been achieved. The registration of civil partnerships should not be allowed to take place on religious premises. I refer to my general comments in my answer to Question 1.

Question 28: Does the equality impact assessment properly assess the implications for people with each of the protected characteristics? If not, please explain why.

Please place a cross in the appropriate box

Yes No

Please explain why –

The impact assessment does not include an analysis or evidence for Policy Option 1 on page 44, to not proceed with permitting the registering of civil partnerships on religious premises. This option should be properly considered and assessed and there should be a question in the consultation document on that option. The only

consideration of the option in the impact assessment takes place on page 55 where it is rejected on the grounds that “It would run counter to Government policy on protecting and promoting LGB rights and the recent exploration of the next steps for civil partnerships.” However, both these points fail. Firstly, because it is the registration of the civil partnership that confers the rights, the venue does not give additional rights (and those who wish to have a civil marriage have no right for it to take place in a religious premises). Secondly, because the “next steps” have not yet been consulted on and it would be wrong for the Government to prejudge the outcome of that consultation. The other reason given for rejecting this option is that, “It would also retain the legal barrier that restricts religious freedom for those faith groups that wish to be able to host civil partnership registrations.” However, if that legal barrier were a real restriction to religious freedom, it would need to be lifted at the same time to allow faith groups to be able to host civil marriage registrations.

Page 63 of the impact assessment acknowledges,

“There may be protests from opposite-sex couples who would still be unable to undertake civil marriages in religious premises and is likely to be controversial within certain faith communities.”

However, this acknowledgment is not properly taken into account within the impact assessment.

Page 77 of the impact assessment states,

“We anticipate that any impact of this measure on health and well-being will be positive for same-sex couples who are able to register their civil partnerships on religious premises, their families, friends and members of the congregation.”

However, the impact assessment takes no account of the detrimental impact on those to object to the proposed change on the grounds that it is a further step towards making civil partnerships an equivalent to marriage on religious premises, thereby compromising the uniqueness of Christian marriage. The consultation document itself (pages 4, 6, 16, 44 and 55) sees the proposed change as a step along that process. The March 2011 action plan implies that those who do not agree with these changes are suffering from “outdated prejudices”. The proposed change will have a negative impact on what are probably still the majority of Christians, and this has not been taken into account.

The consultation document acknowledges on page 15 that,

“Since the introduction of civil partnerships in 2005, LGB people have been able to enter into a formal, legally binding relationship as a same-sex couple. And in so doing, they gain legal recognition of their relationship and vital rights, responsibilities and benefits.”

and that currently:

“...couples may be able to have a blessing at their place of worship after their civil partnership has been registered at a register office or approved premises...”

Page 61 of the impact assessment says that the proposal “allows currently unavailable rights”. However, the proposed change will not bestow greater legal rights on this group (the rights are already there), or lift a ban on religious blessings (there is no ban). Therefore, the benefit to that group of such an additional change is

outweighed by the detriment to those who take a traditional view of the unique nature of marriage.