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Registration of Civil Partnerships in Religious Premises

23 June 2011

The Church of England has today submitted its response to the Government's consultation on Civil Partnerships in Religious Premises.

A Church of England spokesman said: "Given the decision that Parliament has already taken to amend the Civil Partnership Act 2004 in the Equality Act 2010, the response focuses on the need to assure that the forthcoming regulations continue to provide unfettered freedom for each religious tradition to resolve these matters in accordance with its own convictions and its own internal procedures of governance.

"That means that there needs to be an 'opting in' mechanism of the kind that the Government has proposed. In the case of the Church of England that would mean that its churches would not be able to become approved premises for the registration of civil partnerships until and unless the General Synod had first decided as a matter of policy that that should be possible."

Notes

The full text of the submission that addresses the specific questions raised by the consultation is set out below.

In March 2010, the then Bishop of Bradford, the Rt Revd David James, speaking in the House of Lords, expressed concerns about the proposals to allow the registration of civil partnerships in religious buildings.

The text of his speech is available at:

<http://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/100302-0016.htm#1003037000129>

The House of Bishops issued a pastoral statement on civil partnerships on July 25th 2005 and this remains their position. In the statement, the House said: "it would not be right to produce an authorised public liturgy in connection with the registering of civil partnerships. In addition, the House of Bishops affirms that clergy of the Church of England should not provide services of blessing for those who register a civil partnership." (Section 17)

The statement is available at <http://www.churchofengland.org/media-centre/news/2005/07/pr5605.aspx>

CIVIL PARTNERSHIPS ON RELIGIOUS PREMISES

Church of England Response to [GEO](#) Consultation Document

The Archbishops' Council and the House of Bishops of the Church of England are grateful for this opportunity to respond, on behalf of the Church of England to the Consultation Document which the Government issued on 31 March 2011.

The Civil Partnership Act 2004 was welcomed by some within the Church of England for the way in which it addressed the injustices that had previously affected persons of the same sex who wished to share a common life. Others judged that it would have been better to remedy those injustices without creating a legal framework with so many similarities to marriage.

In July 2005 the House of Bishops issued a pastoral statement on civil partnerships. It noted the Church of England's teaching that *'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.'* It also noted that the new legislation made no change to the law of the land in relation to marriage and that civil partnerships were not a form of marriage.

The statement went on to say that *'people in a variety of relationships will be eligible to register as*

civil partners, some living consistently with the teaching of the Church, others not. In these circumstances it would not be right to produce an authorised liturgy in connection with the registering of civil partnerships. In addition, the House of Bishops affirms that clergy of the Church of England should not provide services of blessing for those who register a civil partnership.'

The decision by Parliament in March 2010 to remove the prohibition on the registration of civil partnerships in places of worship was championed partly by a small number of religious organisations that already offered services of blessing and wished to go further by offering their premises for the registration itself. It was also strongly supported by those gay and lesbian people who wished for both the registration and the religious service to be able to happen at the same location.

Speaking on behalf of the Church of England in the Report Stage debate on 2 March 2010, the then Bishop of Bradford expressed caution over the proposed change in the law, partly because of a further perceived blurring in the distinction between civil partnership and marriage, partly because churches and faiths wishing to offer blessing after registrations could already do so and partly because of a concern that what had been portrayed as simply an option might over time become an expectation and even a duty.

Clear assurances were, however, given in Parliament that the arrangement would operate by way of opt-in. There was Church of England support for amendments made at Third Reading to enable the necessary regulations to be drafted to achieve that.

Against that background, **the present objective, so far as the Church of England is concerned, is to ensure that the Regulations that the Government intends to make under the amended provisions of the Civil Partnership Act continue to provide unfettered freedom for each religious tradition to resolve these matters in accordance with its own convictions and its own internal procedures of governance.** For most Christian denominations as well as other faith groups the issues involved are set to remain sensitive and, to varying degrees, contested.

We judge that the approach taken in the consultation paper should be capable of delivering the opt-in approach that we support, given the decision Parliament has already taken. The points raised in the attached appendix are, therefore, essentially of a technical kind. Given the complexity of the legal issues, not least in relation to ecclesiastical law it will be particularly important that there is an opportunity for our lawyers to study the drafting of the regulations before they are laid before Parliament since by then they will be unamendable.

William Fittall
Secretary General
General Synod and Archbishops' Council
Church of England
23 June 2011

Church of England comments on consultation document questions

APPENDIX

Q1: Requiring consent

1. We support the GEO's proposals for an opt-in system of the type described on page 21 of the consultation paper. We agree that it should not be possible to make an application to the local authority for religious premises to be approved for the registration of civil partnerships without the prior consent of the denomination or faith group concerned.
2. We agree that a denomination/faith group should be able to specify a person or body who is competent to give such consent and that anyone applying for relevant religious premises to be approved would have to provide evidence of that consent having been given.
3. We can see no case for framing the Regulations in a way that made it necessary for the specified body of a faith group which had not given a general consent to have to consider requests for its consent to individual applications. Until and unless the specified body has decided that opting-in to these arrangements would be consistent with the convictions of that denomination's/faith the question of individual applications ought not to arise.

4. This is consistent with what we understand to be the meaning of the fourth paragraph on page 21 namely that if a faith group's specified body were simply to remain silent on the question of consent then that would amount to its not having given its consent and that therefore no application for its premises to be approved could be successfully made. That is central to the concept of opting-in.

Q2 and Q3: who will be required to give consent?

5. We agree that because governance structures in faith groups are complex and varied, the Regulations should reflect that diversity.

6. In the case of the Church of England the relevant national decision-making body is the General Synod. The two Archbishops are its presidents, and it comprises a House of Bishops whose membership includes all the diocesan and some suffragan bishops, and Houses of Clergy and Laity whose elected members represent, respectively, the clergy and laity of each diocese. The statutory functions of the General Synod include legislating in respect of matters concerning the Church of England (under legislative powers devolved by Parliament) and considering and expressing its opinion on other matters of religious or public interest.

7. **The specified body for the Church of England should, therefore, be the General Synod and it should be named for that purpose in the Regulations.**

Q4 and Q5: demonstrating consent in applications to the local authority

8. We agree with the principle that individual religious premises should be able to apply to authorised premises for the purpose of registration of civil partnerships only once consent has been given by the specified body or person for that organisation.

9. We agree that an applicant should have to make a declaration that the application was made with the consent of the specified person or body. The local authority should be required to reject an application if it was not satisfied that a required consent had in fact been given.

10. We also agree that there should be a period for public consultation on all applications received by the local authority. This should, in particular, afford an opportunity for objections to be raised in the event of an application being made for the approval of religious premises that did not have the requisite consent.

11. We note that the 2005 Regulations currently provide a right of review of a decision to refuse approval. We assume that this right will be carried over into the new Regulations. We would additionally like to see a right for a nominated person or body of a religious organisation to have a right to seek a review of a decision to *grant* approval on the ground that a required consent had not been obtained. In the absence of such a right of review, the only mechanism that would be open to a religious body whose premises had inadvertently been approved by a local authority without that body having given its consent would be to challenge the approval by way of judicial review proceedings. That would clearly not be a satisfactory position.

Q6: Reversing a decision to give consent

12. We agree that a decision by a denomination/ faith group to give consent should not be irreversible. That is entirely consistent with the principle that a faith group should be able to decide whether or not it wished to participate in the registration of civil partnerships on its premises.

13. On a point of detail the suggestion that in such circumstances, the holder of an approval would have only five working days to notify the local authority that the faith group in question had withdrawn its consent may be too severe. Whilst we agree that the responsibility for notifying the local authority lies with the holder of the approval, a period of 14 days, or perhaps a month would seem more realistic.

Q7 and Q.8: Buildings issues

14. We agree that it is important to have clarity about which faith groups qualify as religious organisations, what buildings constitute religious premises and if so, who is authorised to give a general consent for that building.

15. We agree with the Government's proposed general approach of seeking to make use of the existing system of certification as a place for meeting for religious worship under the Places of

Worship Registration Act 1855 in so far as that system is applicable.

16. But, as 3.14 states, the 1855 Act does not apply to the Church of England and the Church in Wales since they are not required to register their places of worship for the solemnization of marriages.

17. The question of how best to define the category of buildings that should qualify as Church of England "religious premises" for the purposes of the Regulations does therefore require quite careful analysis and we have some doubts whether the "belongs to" formula proposed in paragraph 3.15 will work best.

18. This is something best explored in discussions between lawyers but the underlying point is that buildings which are normally used for the religious purposes of the Church of England vary considerably and include not only parish churches and cathedrals but also the chapels of public and charitable institutions and a significant range of other buildings. None of these 'belong to' the Church of England in the sense that there is a corporate body called 'the Church of England' that owns them.

19. So, the application of a definition that employs the expression 'belongs to the Church of England' (as suggested in paragraph 3.15 of the consultation paper) is, therefore, far from straightforward. We think that in technical bilateral discussions a suitable alternative drafting approach could be identified.

20. We would also welcome clarification on a question that arises from what is said in paragraph 3.11 ff. As we understand what is said, it seems that it is possible that there might be some premises that come within the definition of "religious premises" in section 6A of the Civil Partnership Act but which will not come within any of the three categories set out in paragraph 3.15 - because, for example, the owners of the premises have not registered them under the Places of Worship Registration Act 1855. What would be the position in respect of such premises? Would they simply be "religious premises" that were incapable of being approved premises; or could they apply to be approved as secular premises? We assume that the latter possibility is not intended as it would undermine the purpose of the Regulations in distinguishing the two types of premises.

Q.9 and Q.10: Availability and public access

21. Currently, in order to be approved, a set of premises must be regularly available to the public for the registration of civil partnerships and for the conducting of civil marriage.

22. Now that places of worship are for the first time to be able to host civil partnership registrations the stated policy is that faith groups should have discretion about who may seek to register civil partnerships on their premises. As a matter of general principle, it seems to us important that any religious body that has chosen to have premises approved for the registration of civil partnerships should have the ability to decide that only members of the religion in question would be able to avail themselves of that facility. That would be consistent with the principles described in paragraph 3.18.

23. Marriage and civil partnerships attract certain rights, privileges and responsibilities because of their public nature. We agree that the registration of a civil partnership should, therefore, continue to be in the nature of a public act and that the condition in the 2005 Regulations requiring public access during proceedings should apply to civil partnership registrations on religious premises.

Q.11 and Q.12: Layout and general use

24. It would be very difficult for places of worship to change their layouts to fit similar requirements set out in the current Regulations for approved premises. For example, some have only one building which is multipurpose and contains eating facilities. In addition within many faith traditions some consuming of food or drink would be a normal part of a religious ceremony. It is difficult to see, therefore, how the present rules in relation to secular approved premises could be consistent with the policy intention lying behind the relevant provision in the Equality Act.

Q.13: Religious symbols, iconography and objects

25. It would also be contrary to the policy intention underlying the provision as well as objectionable in principle and impracticable if religious premises were required to remove their religious symbols, decorations and objects in place while civil partnerships were registered. The

proposal in the consultation document is, therefore, sensible.

26. This does, however, raise the theoretical possibility of pressure growing to change the boundaries currently in place between civil and religious marriage. As the law stands there are prohibitions on religious symbols etc in the case of places where civil marriages are conducted (whether they are conducted in a register office or on 'approved premises'). And a civil marriage without a religious ceremony is not possible in a place of worship. We do not believe that the change proposed in the consultation document provides a justification for removing those prohibitions in relation to marriage ceremonies.

Q.14: Conduct of the ceremony

27. As the law currently stands the prohibition on the use of any religious service applies equally to the case of civil partnerships as to civil marriages (whether they are conducted in a register office or on 'approved premises').

28. That prohibition (which is subject to detailed provision contained in subordinate legislation) was imposed because of concerns raised both by the Churches and by the General Register Office that civil registrars - whose office is purely secular and who themselves might be the adherents of any religion or none - should not have responsibility for, or need to become involved in, religious services and related matters.

29. There are therefore good reasons for keeping the existing prohibition. Moreover, it would on the face of it, be anomalous to remove the prohibition on the use of any religious service in relation to the registration of civil partnerships but to retain it in relation to civil marriage. Persons wishing to marry in a civil ceremony might have some difficulty in understanding why same sex couples can have a biblical reading in a ceremony conducted by a civil registrar, for example, but not those wishing to be married.

30. It is sensible, therefore, as the consultation documents envisages, that a condition for couples to have a religious ceremony following the registration where the religious body in question agrees should be that the two elements are kept distinct.

Q.15 - 20: Approval of premises

Who can apply

31. As noted above, there are some complex technical issues that arise in relation to Church of England buildings about the identity of the 'owner'. The consultation document's use of the concepts of 'trustee' or 'proprietor' are potentially problematic in relation to ecclesiastical law and need further discussion with our lawyers.

Fees

32. We agree that local authorities will need to recover some of the costs of administering the process of registration. Any fees should be proportionate to the cost of applying to be a registered place of worship for the purpose of solemnization of marriage.

Revoking approval

33. We agree that local authorities should be able to revoke the approval of religious premises that ceases to meet the conditions on which it was granted.

Training and information

34. Para 3.27 and para 3.33 state that guidance for faith groups and individual ministers of religion on the process and requirements for applying to become an approved premises will be provided. We would be interested to know how this will be done. It may be best, given the contentious nature of this issue for very many denominations/ faith groups, if the information were simply available on a website and sent when requested to those who wish to offer this service once general consent had been given.

Q 21: Other issues

The faculty jurisdiction

35. In English law, all parish churches of the Church of England and a number of other ecclesiastical buildings are subject to the jurisdiction of the consistory court of the diocese. This aspect of the court's jurisdiction is called "the faculty jurisdiction". It extends to controlling not only the making of physical alterations to a church building and to the introduction or removal of articles

to or from the building, but also the uses to which a church building may lawfully be put with the consent of the bishop through his chancellor.

36. Any ~~more~~ use of a church building which is subject to the jurisdiction of the consistory court (other than a use which is expressly authorised by legislation) requires the authority of a formal permission - called a 'faculty' - from the consistory court in order for that use to be lawful.

37. The registration of civil partnerships in a church building would, as a matter of law, amount to a non-sacred use of that building. It would, accordingly, require the authority of a faculty. The regulations need therefore to be drafted in a way that leave no doubt that they are without prejudice to the jurisdiction of the consistory court of the diocese.

Religious celebrants

38. The suggestion outlined in para 3.24 to allow faith groups to have their own registrars to conduct civil partnership registration would constitute a further erosion of the essentially civil nature of civil partnerships and their distinctiveness from marriage. The implications of this merit further thought.

Q.22: Potential legal challenges

39. The exposition of the legal positions in paragraph 3.35 is helpful and accords with our own understanding that it would not be possible to bring a successful discrimination claim on the basis of religious premises - which were available for the solemnization of marriages - not being available for the registration of civil partnerships. It would be helpful if Ministers could read this analysis into the Parliamentary record when the Regulations are eventually debated.

Q.23 - Q.25: Impact assessment

40. The number of individuals who might wish to register their civil partnership on religious premises each year is unknowable. All of the figures quoted in the document need therefore to be treated with a good deal of caution.

41. The appendix quotes figures for ministers of religion and, presumably because of the ready availability of our table of fees, draws on some Church of England figures in relation to clergy and weddings. For the record, therefore, the cost figure used by the Church of England for the new proposed method of calculating parochial fees for clergy is £44,000 pa or £21.25 per hour. The time estimate is 7.5 hours (for all the administration and pastoral work relating to an average Church of England religious marriage). The value to the minister is calculated at £36,500 pa or £17.65 (approx) per hour. This includes estimates for all the non cash benefits of the clergy remuneration 'package'. The national average stipend for clergy is £22,570 pa or £10.90 per hour.

Church of England
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