

Submission to the Merits Committee - The Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2011

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 have a longstanding interest in these Regulations, including meeting with the minister, Lynne Featherstone, and her officials, to discuss our concerns.

We have taken legal advice from Professor Mark Hill, QC, a prominent ecclesiastical lawyer. A copy of Professor Hill's opinion is appended and we would be grateful if the Committee would treat it as part of The Christian Institute's submission.

The Regulations threaten religious liberty and ignore the different types of church structure

In summary, Professor Hill advises that the Regulations laid on 8 November do not offer sufficient legal protection to churches that do not wish to host civil partnership registrations:

- The Regulations leave scope for litigation under the Equality Act against churches that do not wish to apply to register civil partnerships. The 'conscience clause' in the Regulations and in section 6A of the Civil Partnership Act states that nothing in the Regulations or in that Act requires churches to register for civil partnerships. However, any legal challenge would not be brought under the Regulations or the Civil Partnership Act but under the Equality Act. The conscience clause does not protect against that Act. Furthermore, religious exemptions within the Equality Act itself (Schedule 23) pre-date the regulations and do not appear to apply. The exemptions do not apply to religious bodies exercising a "public function". This would seem to include exercising statutory powers to register marriage or civil partnerships.
- Combined with the public sector equality duty, the Regulations even raise the prospect of churches being refused the right to register marriages at all, if they will not also register civil partnerships. The *Ladele* case found that being willing to register marriages but not civil partnerships constituted discrimination. The public sector duty requires local authorities to "eliminate" discrimination. Local authority solicitors, or activist groups, may advise local authorities that the duty requires them to use their power over who may register marriages as a tool for eliminating discrimination by churches. The *Johns* case suggests such a policy would be permitted by the courts.
- The complexities of the many different types of church structures are not properly accounted for in the Regulations. They appear designed very much with the Church of England and the Roman Catholic Church in mind, along

with the small number of religious groups that lobbied for the right to register civil partnerships. They do not, however, show an appreciation for many other types of church structure and the complicated relationships which can exist between congregations, one the one hand, and on the other, their denominations, or those who otherwise have responsibility for the buildings in which they worship. The Regulations create enormous scope for opening up divisions within many churches and denominations by failing to require that all those with a legitimate interest should be involved in a decision to apply to register civil partnerships. This is tacitly admitted in the proposal (paragraph 2.13) to:

“make clear in guidance and on the application form that best practice is for the proprietors or trustees of the premises to make their congregation aware that they have applied e.g. by publishing a copy of the application form on a notice board within the premises that is accessible for the congregation to see. In addition, each application will be required to be advertised by a local authority and is subject to a period of 21 days public consultation, providing further safeguards against applications being made without the knowledge of the relevant congregation.”

Remarkably, the Regulations allow a lone trustee to apply to register his church, without the consent of the rest of the trustees or the congregation. Clearly, in such a controversial area, this is quite unacceptable. GEO officials advise us that they are unable to make the advertising of the application a statutory requirement. We assume this is because of the deficiencies of the anchoring provisions – see below.

We also note a major inconsistency with the equivalent procedure for registering churches for marriage. Section 41 of the Marriage Act 1949 requires that twenty householders should sign the application, declaring that the church is their regular place of worship and that they wish it to be registered to solemnise marriages. An equivalent requirement in the Regulations would have gone some way to ensuring that the congregation of the church were involved in the application to host civil partnerships. Its absence from the Regulations is puzzling.

Defects in the Regulations result from defects in the anchoring provisions

These regulations stem from section 202 of the Equality Act 2010. Section 202 was inserted by Lord Alli on a free vote which took place shortly before 11pm on 2 March 2010. His amendment was passed by 95 votes to 21 when the vote was called after most Members of the House had left, and when the Government made the surprise announcement that it would not be resisting the amendment.

This decision was especially surprising given that the then Leader of the House had listed numerous defects with the amendment and argued that further consideration and legislation would be needed to properly implement Lord Alli's plan.

The problems Mark Hill identifies with these Regulations could have been more adequately addressed had the matter been legislated for properly in the first place. Lady Royall's criticisms of section 202, and Lord Alli's response, are appended below in full.

The Christian Institute
15 November 2011

Appendix

Hansard, House of Lords, 2 March 2010, columns 1437 - 1440

Baroness Royall of Blaisdon: My Lords, I am grateful to my noble friend Lord Alli and the noble Baronesses for bringing the important issues dealt with by Amendment 53 back before this House for further consideration. The intention is to remove the express prohibition on civil partnerships taking place in religious premises. This is an important issue and merits serious and careful consideration.

As many noble Lords have rightly stated, civil partnerships, like civil marriages, are entirely secular. These ceremonies cannot take place in religious premises or contain any religious language. The secular nature of these unions clearly separates them from religious unions. Representatives of three different denominations -Quakers, Unitarians and liberal Jews-have raised with us their wish to carry out civil partnership ceremonies in their meeting houses or places of worship. In Committee, a number of noble Lords put forward strong arguments supporting the faith groups that wish to be allowed to perform these ceremonies. The broad debate in Committee also exposed the wide range of views from across faith groups and others on the issue-not least from the chairman of the Conservative Party. In addition, it illustrated the considerable range of issues that would be caused by changing the way in which civil partnerships are registered.

I understand what my noble friend and the noble Baronesses are seeking to achieve. Like many noble Lords, I have great sympathy with their aims and fully recognise that civil partnerships are about commitment and loving relationships. However, while my heart supports the intentions of my noble friend, my head knows that the amendment raises a number of problems. I fear that it would not work in practice. It breaks the important link that we have always maintained between civil partnership and civil marriage. It blurs the line between what is a civil partnership and something that has elements of a religious partnership. It introduces ambiguity into the role of registrars and it is unclear what, if any, religious language would be able to be used during any civil partnership ceremony conducted in religious premises.

There are also significant practical problems with the amendment. For example, it leaves in place Section 2(5) of the Civil Partnership Act, which prohibits the use of any religious service while the civil partnership registrar is officiating at the signing of the civil partnership document. This would mean that, while the amendment might permit civil partnerships to take place in religious premises, those conducting them would not be able to

Column 1438

use any type of religious service, which could include religious language, prayers or readings. My noble friend's amendment would also preclude any changes to the current approved premises regulations for civil partnerships that do not mirror the position for civil marriages in any way, other than to allow for religious venues. That

means that the current condition would remain that neither civil partnerships nor civil marriage proceedings can be led by a minister of religion or religious leader.

While I am certain that the religious groups seeking this amendment would wish to celebrate these unions with religious services, that would not be achieved. As there is still a requirement for a registrar to carry out civil partnerships, this amendment could mean that the civil registrar would need to wait outside until all religious aspects of the ceremony were completed, to be brought back in to officiate for the signing of the register, or that the clergy wait outside the church until the civil aspects of the partnership were concluded. That highlights some of the practical issues that we need to deal with.

Further, the amendment would break the carefully established and maintained link between civil partnerships and civil marriages—the foundation of the civil partnership regime. That would lead to the anomalous position where civil partnerships could take place in religious premises but civil marriages could not. This could leave some heterosexual couples feeling at a disadvantage if they wanted their civil union to be held in a church, synagogue or other religious building.

My noble friend made it clear in his introduction that he is intending for this to be a permissive provision. I am also aware that faith organisations would want to be clear from the outset that they could decide whether to allow civil partnership ceremonies on their religious premises or not. However, nothing included in the amended Section 6A would allow the regulations to provide for a denominational opt-in or permit any other way of dealing with differing positions for different religions. It is not clear how we could deal, for example, with a situation where a particular religious organisation does not wish to allow civil partnerships on its premises when their local priest or rabbi, who controls the relevant premises, does.

Finally, we need to consider the position of the civil registrars who would need to conduct these ceremonies. To what extent would or should they be able to opt out of attending at some or all religious premises? While on the face of it my noble friend's amendment looks sensible and logical, it will not achieve what he is seeking, as I have explained. My noble friend and others may think that the potential problems that I have raised are not insurmountable. They may be right.

Lord Smith of Finsbury: I am puzzled by the Leader of the House's argument that this somehow puts civil marriage at a disadvantage, because surely a heterosexual couple who wish to get married have the free choice of being able to marry in religious premises with a religious ceremony.

Baroness Royall of Blaisdon: My Lords, I hear what noble Lords are saying around the Chamber, but if people have been divorced in certain religions, as the noble Lord said, they are not allowed to be married in some churches.

Column 1439

Viscount Astor: I am delighted to inform the Minister that the Church of England has changed its position since that was the case some years ago. The Roman Catholic Church has always allowed divorcees to get married, as has the Church of Scotland.

Baroness Royall of Blaisdon: I am extremely grateful for that clarification, but I will come back to my noble friend in writing.

A noble Lord: Oh!

Baroness Royall of Blaisdon: I will come back to the noble Lord in writing because my notes say one thing and other noble Lords are saying something else. I will give the clear view of the Government, which is the right and proper thing to do. It may be too late if the amendment is passed, but it is still good for people to have clarification on this issue.

This is a complex issue, which we need to consider carefully if we are to be sure that any changes will achieve what they are designed to do and will be workable in practice. Should my noble friend be successful in making his amendment, there would need to be wide discussion and careful consideration of what further measures would need to be put in place and what further legislation would be needed. That is why the Government believe that the most appropriate way forward is to consider the issue further and to solve these problems before any legislative change is made.

The amendment raises issues of fundamental religious conscience. This is not a question about civil rights for lesbians and gay men. Same-sex couples already have the right to legal recognition of their relationship, with the rights and responsibilities which go along with that, thanks to the groundbreaking Civil Partnership Act, which I am proud to say this Government placed on the statute book in 2004. Our record on rights for LGB people is second to none, but this amendment would give faith organisations the freedom to host civil partnerships on their premises, raising fundamental issues for religious organisations, and it is therefore right that they are considered as matters of individual conscience. As my noble friend clearly stated, this is a matter of religious freedom. That is why we want to have a full and open discussion with all those concerned. We can then consider the issues carefully and arrive at the right way forward for this country, which deals with the wide range of matters which will be affected by the change-

Baroness Butler-Sloss: Is the Minister proposing that this should be done before Third Reading, or at some undefined stage in the next Parliament?

Baroness Royall of Blaisdon: My Lords, it would be unrealistic for me to promise to have a consultation before Third Reading, which we hope will take place in the next few days or weeks. I am therefore thinking in the longer term. We can embark on this consultation quite soon, but clearly it would not conclude until after the election. We want to take the time to listen to the wide spectrum of views, including from the faith communities, LGB representatives, and those who work as registrars. We will consider the whole range of options to gain a clearer understanding of the impact of the issues involved before deciding how to proceed

Column 1440

On this basis, as noble Lords will know, we have a free vote on this amendment. If it is taken to a vote and the will of the House is to accept it, there will need to be further work to determine the extent of further legislation needed to ensure that it is possible

to approve religious premises for civil partnerships. Our preference would be to get this right from the outset.

As we have said before, while we support the intention of my noble friend's amendments, I have today raised our concerns about how this would work in practice. I have made it clear that we are committed to taking the time to consider any changes carefully, and I therefore urge my noble friend to withdraw his amendment.

Lord Alli: My Lords, the hour is late so I will restrict my comments. First, let me thank all those who participated in the debate and all those who have given me their support. I single out only one person: the noble Baroness, Lady Campbell of Surbiton. It is well past the time she normally leaves, oxygen is short, and it was incredibly kind and generous of her to support my amendment tonight.

Noble Lords: Hear, hear.

Lord Alli: I also thank the Bishops, former Bishops and theologians who wrote to the *Times* to add their support to the amendment. I am clearly disappointed by the response from the right reverent Prelate the Bishop of Bradford, but I hear his argument. That disappointment is nothing compared with the words which the Leader of the House uttered, but let me say this to those outside and to everyone in this House; the Leader of the House and the noble Baroness, Lady Thornton, have been supporters of these rights throughout their time in office and on the Back Benches, they have worked incredibly hard to secure us our free vote, and I thank them wholeheartedly for their continued support, whatever small print they were forced to read out. On that basis, I beg to test the opinion of the House.

10.59 pm

Division on Amendment 53

Contents 95; Not-Contents 21.

Amendment 53 agreed.