

Dear Sir,

**Evangelical Alliance – Submission to the Merits Committee**  
**Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations**  
**2011**

**Introduction**

The Evangelical Alliance, founded in 1846, represents the majority of the UK's 2 million+ evangelical Christians.

We are writing to the Merits Committee regarding the above regulations because, despite attempts to convince the Government Equalities Office that they do not meet their own assurances that ministers of religion and churches would not be put at risk, the published regulations manifestly fail to do so. The Government Equalities Office has not sufficiently taken on board our concerns by including additional protections which we believe should take the form of an appropriate amendment to the Equality Act 2010.

The Evangelical Alliance therefore believes that these regulations fail to meet the policy objectives set by the Government and do not fulfil the requirements of the original legislative amendment which sought to protect churches from consequential potential legal action.

**Background**

Earlier this month the Government Equalities Office (GEO) published a 'Summary of Responses' to its consultation on civil partnerships in religious premises. Paragraph 1.9 of that document states:

“The voluntary nature of section 202 was at the heart of the proposals outlined in the consultation document. The proposals were designed to put in place a regime that enables faith groups to opt in, respects the different decision-making structures of different faith groups, protects faith groups and individual ministers from the risk of successful legal challenge if they do not wish to host civil partnership registrations, and is straightforward for local authorities to operate.”

We believe the regulations:

- (a) fail to “respect the different decision-making structures of different faith groups”;
- (b) fail to “[protect] faith groups and individual ministers from the risk of successful legal challenge if they do not wish to host civil partnership registrations”, and
- (c) are not “straightforward for local authorities to operate.”

The Evangelical Alliance represents thousands of churches. Many of these will be placed in a vulnerable position by these regulations. The Alliance has been involved in direct discussions with the GEO about these regulations. Whilst we appreciated the opportunity to make representations to the GEO, we do not believe sufficient effort has been made to address our concerns in the published regulations. Indeed, we believe that only an amendment to primary legislation would be sufficient to guarantee the position of churches that do not wish to apply to register civil partnerships.

**Different decision-making structures of differing faith groups**

We believe the published regulations overlook the complexities involved in church structure and ownership.

In terms of individual religious premises seeking registration under the scheme a great deal will centre on who is considered to be the responsible “owner”, “trustee” or “proprietor” of the property. The Government seems to have overlooked the fact that many Christian congregations meet in church buildings that they do not ultimately control.

Many independent churches operate in buildings they do not own. The Trustees of the building may be from a different denomination or grouping from their own. There are evangelical ministers and congregations in denominations which have, to some extent, endorsed homosexual conduct and which own the church property. Officials for such a denomination may try to register all its premises, leaving evangelical ministers in a very difficult position. It is highly likely that the Government’s proposals would open up deep internal divisions in many denominations. A situation could easily come about where the secular courts end up adjudicating on the theological issues involved.

It was suggested to us by GEO officials that they could not be responsible for the internal divisions within denominations. Of course this is true. But by choosing to go ahead with these regulations (section 202, the anchoring provision, does not require the Government to act so the decision is entirely voluntary), the Government has effectively decided to involve itself in these divisions. Hence it recognises the need to respect the different church structures. But the regulations fail to properly achieve this.

### **The need to protect faith groups and ministers who do not wish to host civil partnerships**

Contrary to the expressed aim of the original legislation, there is widespread concern that allowing civil partnerships to be registered in churches will inevitably lead to legal actions against those who refuse to participate. If a church itself is registered, because the owner denomination endorses civil partnerships, but the minister or congregation refuses to host a particular civil partnership, they are vulnerable to legal action by the homosexual couple concerned. No safeguards have thus far been proposed by the Government.

We are also aware that many faith groups and church ministers will be concerned about the impact of the New Public Sector Equality Duty in section 149 of the Equality Act 2010. Some of its implications have already been discussed in the Administrative Court<sup>[1]</sup>

Section 149 of the Equality Act 2010 states:

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—*
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).*

Under the terms of section 149, a local authority has a duty to eliminate discrimination. There are exemptions in equality law, such as Schedule 23, which allow religious groups to discriminate in certain circumstances. But section 149 does not appear to recognize those.

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<sup>[1]</sup> *R (On the application of Johns and Johns) v Derby City Council* [2011] EWHC 375 (Admin), per Munby LJ and Beatson J.

So a local authority must eliminate discrimination even where that discrimination is protected by an exemption.

Under section 149 (2) Church ministers are likely to be caught by this same duty when conducting a marriage. Section 150 (5) of the Equality Act 2010 states:

*“A public function is a function of a public nature for the purposes of the Human Rights Act 1998.”*

The case of *Cantlow & Wilmcote* declares that a cleric of the Church of England, when conducting a marriage, is exercising a public function. In *Parochial Church Council of Aston Cantlow & Wilmcote with Billesley, Warwickshire v Wallbank* [2003] UKHL 37 at paragraph 170, Lord Rodger of Earsferry stated:

*For the most part, in performing his duties and conducting the prescribed services, the minister is simply carrying out part of the mission of the Church, not any governmental function of the state. On the other hand, when in the course of his pastoral duties the minister marries a couple in the parish church, he may be carrying out a governmental function in a broad sense and so may be regarded as a public authority for purposes of the 1998 Act ... from time to time, when performing one of his pastoral duties – conducting a marriage service in the church – the minister himself may act as a public authority.*

It is likely that ministers of other denominations when registering marriages (or in the future civil partnerships) in religious premises will be considered to be exercising a public function. Therefore a finding of discrimination on the ground of sexual orientation is very likely to result against faith groups, individual church owners or trustees or their ministers that refuse to host civil partnerships in cases where they are however prepared to host marriages. No safeguards have been proposed by the GEO, contrary to the aim of the original legislation.

### **Proposed scheme not straightforward for local authorities**

Clearly, the Government cannot be held accountable for the internal differences within denominations. However, its legal scheme must provide a framework which accounts for the wide range of different practical situations in which individuals find themselves and which fully protects the right of conscience of church leaders who oppose civil partnerships. The Government would be acting unfairly if it fails to give such churches proper legal protection.

We also believe 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 protect religious liberty in years to come.

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? Where there are disputes, with one group claiming the church wishes to register civil partnerships and the other group claiming it does not, conscientious local authorities would find themselves investigating the internal church structure and seeking to determine where proper authority lay. Less diligent local authorities may simply grant licences and leave the church or denomination to battle the matter out in the courts. Same sex couples registering a civil partnership at such a church may find themselves at the centre of great uncertainty over the validity of their registration.

It is very unlikely that local authorities will possess the resources necessary to adequately police such complex scenarios.

## **Conclusion**

During House of Lords debate on the Equality Act 2010, when the amendment which became section 202 (the anchoring provision of these regulations) was discussed, Government ministers rehearsed the many problems relating to the amendment which lay behind their lack of support for it. However, they did not whip against it largely because ministers were openly sympathetic to the aims. On a small turnout, it was passed by 95 votes to 21. This should serve as an indication that there is something fundamentally wrong with these proposals. We do not think that the negative effects of the statutory instrument as published have been fully considered.

In the circumstances, we believe the regulations should be withdrawn and reconsidered in the light of their likely consequences. If the Government is to proceed with allowing civil partnerships to be registered in certain churches, we would urge the necessity of its bringing forward primary legislation to address the various problems and concerns to which the current proposal gives rise. What is clear is that the published regulations do not achieve the aims of the original amendment which was supposed to guarantee protection for churches that do not wish to carry out civil partnership ceremonies. This they manifestly fail to do.

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