

Salt and Light Papers provide important information and analysis to help Christians and Churches to engage with 21st century social issues

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UNWANTED LIBERTY LEAVES CHURCHES UNCERTAIN

Churches which refuse to register their premises for the conduct of civil partnerships still face uncertainty over the extent to which current law protects them in the event of legal action being taken against them.

Parliament approved the relevant Regulations, allowing religious premises to be registered for civil partnership ceremonies, in December 2011, but failed to provide watertight safeguards to ensure that churches or church officers could not, under any circumstances, be pursued in law.

The furthest the government reached was to express a strong opinion that churches are protected by law and by regulation. One provision quoted, for instance, was Section 202(4) of the Equality Act 2010 which inserted the following after Section 6(3) of the Civil Partnership Act 2004: 'For the avoidance of doubt, nothing in this Act places an obligation on religious organisations to host civil partnerships if they do not wish to do so'.

In addition to this, Parliament has also approved the insertion of the following into the Marriages and Civil Partnerships (Approved Premises) Regulations 2005: 'Nothing in these Regulations places an obligation on a proprietor or trustee of religious premises to make an application for approval of those premises as a place at which two people may register as civil partners of each other in pursuance of section 6(3A)(a) of the 2004 Act'.

Over and above these provisions, Lord Henley, government spokesman in the Lords during the debate on the Regulations allowing civil partnerships to take place in religious buildings, promised that if any legal case is successfully brought against a religious body or a minister of religion or another officer, fresh legislation would be introduced to close this loophole.

These provisions and assurances were sufficient to prevent the Regulations from being pressed to a vote in the Lords following the debate on 15 December, but there are lingering doubts as to whether religious groups are adequately safeguarded.

The following are the main continuing points of concern:

- Top-ranking lawyers are divided as to the vulnerability of religious bodies to legal action. One of the problems is that the words which have been inserted in the 2004 Act and in the 2005 Regulations apply specifically to those legal instruments, and it is not crystal clear that churches are not still at risk from other current equality legislation. The formal opinions of two QCs have concluded that churches are at some risk. If legal experts are not convinced, then it is difficult for churches to be confident;
- Though it would require an unusual combination of circumstances, it is still technically possible, in some cases, for church premises to be registered for civil partnerships without the consent of the congregation in sole occupation of those premises. This risk could have been removed entirely by requiring the consent of the local congregation to any application for registration, but this safeguard was not included in the Regulations. If any premises are ever registered without a local congregation's consent, this would inevitably render the congregation more vulnerable to legal redress if it then sought to prevent a civil partnership taking place in a registered building. As things now stand, a local congregation would be entitled to object to an application, if it heard that it had been made. It is reasonable to assume that it is much more likely than not that a congregation would hear about an application. However, there is no certainty that the local congregation would become aware of the application – nor, if the congregation objected, that the local authority responsible for registering churches for civil partnerships would in every such case refuse the application.
- Under current equality legislation, public authorities have a legal obligation to ensure that in exercising their functions they operate in accordance with equality criteria. Concern has been expressed that if a church applies for its premises to be registered for marriages but not for civil partnerships, this may fail the equality test and lead to the refusal by that local authority to register the building for marriages. It is impossible to guess whether any local authority will see fit to take this view. As registration for marriages is a once-only registration which does not expire or require renewal, existing registrations would not be affected, unless an existing church moved to a different building, or a different church moved into a building with an existing registration. The registration of a building for marriages applies to one church in one building.
- A government promise to take action if anyone does win a case against a church or its officers brings no comfort to the church or its officers who are involved in that test case. They will have suffered the injustice and the penalty of that litigation, and that will not be overturned whatever future legislation is enacted.

All the above risks are unlikely or improbable, but they are certainly possible, and it is regrettable that the opportunity was not taken to put in place the obvious and absolute safeguards which would have prevented all doubt. However churches should not be deterred from maintaining their

refusal to register, and should not be anxious. Only a very small number of churches is likely to encounter any difficulty, and there will be plenty of advice and support available to any churches which find themselves faced with a legal issue.

It is a tragedy that legislation has been brought in which permits civil partnerships to take place in churches. The demand for this did not come from churches or other religious groups, but has been driven from outside. In other words the State has invaded the church's own territory and jurisdiction, bringing about a change in the relationship between the church and the civil law by a process in which the church has been little more than a spectator. While it is our biblical duty to cooperate with those who have the responsibility of government, we must continue to challenge and resist any attempt by government to seize authority and influence over the practices of churches, and the use of their properties.

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