

CIVIL PARTNERSHIPS IN RELIGIOUS PREMISES
Note from the Secretary General

1. In view of the likely media interest in and possible controversy over a change in the law which comes into effect on 5 December this note and the attachment prepared by the Legal Office provide some background information and explanation for the benefit of Synod members.
2. The Civil Partnership Act 2004, which came into force in December 2005, provides for two people of the same sex to register as civil partners. A civil partnership must be registered in a register office, or on premises approved by a local registration authority (“approved premises”). The Civil Partnership Act as originally enacted provided that civil partnerships could not be registered on “religious premises” (defined as premises which are used solely or mainly for religious purposes, or which have been so used and have not subsequently been used solely or mainly for other purposes).
3. The House of Bishops issued a pastoral statement in July 2005 shortly before the legislation came into force. Among other things it affirmed that “*clergy of the Church of England should not provide services of blessing for those who register a civil partnership*” and that “*where clergy are approached by people asking for prayer in relation to entering a civil partnership they should respond pastorally and sensitively in the light of the circumstances of each case.*”
4. In March 2010 Parliament decided, during the passage of what is now the Equality Act 2010, to remove the prohibition on the registration of civil partnerships on religious premises. Speaking on behalf of the Church of England in the House of Lords, the then Bishop of Bradford expressed caution over the proposed change in the law, partly because of a further perceived blurring of 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.
5. Clear assurances were however given in Parliament by the then Government that the new possibility for the registration of civil partnerships on religious premises would operate by way of denominational opt-in and that no Church or other religious body would be under any obligation to permit the registration of civil partnerships on its premises.
6. In March 2011 the new Government issued a consultation document on the way in which this change in the law would be implemented. It reaffirmed previous commitments. A response agreed by the Archbishops’ Council and the Standing Committee of the House of Bishops stated:

“... 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.”
7. The Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2011 – which contain the new arrangements relating to religious premises – were laid before Parliament on 8th November 2011 and come into force on 5th December 2011. The Legal Office’s analysis of the regulations is attached.
8. In short, the position under the new arrangements is that no Church of England religious premises may become “approved premises” for the registration of civil partnerships without there having been a formal decision by the General Synod to that effect.

William Fittall

1 December 2011

Secretary General

Church House, Westminster

**THE MARRIAGES AND CIVIL PARTNERSHIPS (APPROVED PREMISES)
(AMENDMENT) REGULATIONS 2011**

1. Besides register offices, civil partnerships can be registered only on premises that have been approved by a registration authority under the Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (as amended by the 2011 Regulations). A registration authority may in future grant an application for the approval of religious premises but only if it is satisfied that a number of conditions are met.
2. One of those conditions is that the religious premises are within one of the following categories: (a) a church or chapel of the Church of England, (b) a church or chapel of the Church in Wales, (c) a place of meeting for religious worship in the list of certified places under the Places of Worship Registration Act 1855, (d) a place of meeting of the Society of Friends ('Quakers'), or (e) a Jewish synagogue.
3. Under the regulations, an application for the approval of a church or chapel of the Church of England cannot be validly made unless the application is accompanied by the consent in writing of the General Synod. That means that it will not be legally possible for any church or chapel of the Church of England (irrespective of who owns or controls the building in question) to become approved premises for the registration of civil partnerships without the consent of the Church of England as a whole expressed by way of a resolution of the General Synod. In the absence of such a resolution the Synod would not have given its consent for the purpose of the regulations.
4. A relatively small number of churches of the Church of England may also be places of meeting for religious worship that are certified under the Places of Worship Registration Act 1855 (e.g. where a church is subject to a sharing agreement under the Sharing of Church Buildings Act 1969 and is certified as a place of worship of one of the other denominations). The regulations deal with sharing agreements and other, less formal, sharing arrangements by providing that, where these exist, the consent of the denominational bodies of all of the Churches involved are required before the shared building can become approved premises.
5. The question has been raised in Parliament and elsewhere of whether a religious denomination, or a local church, which declined to seek to have its premises approved for the registration of civil partnerships could be held to be discriminating in a way which is unlawful under the Equality Act 2010. The clear view of the Legal Office is that it could not. This is also the declared view of the Government's lawyers.
6. A key relevant provision is section 29 of the Equality Act which makes it unlawful for "a person (a "service-provider") concerned with the provision of a service to the public or a section of the public" to discriminate on various grounds, including sexual orientation, "against a person requiring the service by not providing the person with the service". A Church which provides couples with the opportunity to marry (but not to register civil partnerships) is "concerned with" the provision of marriage only; it is simply not "concerned with" the provision of facilities to register civil partnerships.
7. That would be a different "service", marriage and civil partnership being legally distinct concepts. If Parliament were in due course to legislate for same sex marriage, as recently suggested by the Prime Minister, we would of course be in new territory. But that is a separate issue which would have to be addressed in the course of that new legislation.
8. The non-discrimination requirement imposed by the Equality Act on service-providers does not include a requirement to undertake the provision of other services that a service-provider is not already concerned with providing just because the services that it currently offers are of such a nature that they tend to benefit only persons of a particular age, sex, sexual orientation etc. Thus, for, example, a gentlemen's outfitter is not required to supply women's clothes.

A children's book shop is not required to stock books that are intended for adults. And a Church that provides a facility to marry is not required to provide a facility to same-sex couples for registering civil partnerships.

9. The "public sector equality duty" (contained in section 149 of the Equality Act) also has no implications for a Church's decision whether to make its premises available for the registration of civil partnerships. A Church is not exercising public functions in making such a decision so the duty is not applicable.
10. The public sector equality duty will not prejudice denominations who conduct marriages (and whose buildings, unlike those of the Church of England, need to be registered for that purpose) but who do not wish to host civil partnerships. The registration of buildings for marriages is a purely administrative act by the registration authorities and does not involve them exercising a discretion or taking a decision. The public sector duty is therefore immaterial to the registration process.
11. The Equality Act contains various exceptions for religious organisations (see Schedule 23). But given what is said above, it is not considered that a Church which solemnized marriages but did not wish to provide facilities for the registration of civil partnerships would need to rely on any of these since it would not be doing anything that even *prima facie* amounted to unlawful discrimination.