

A consultation on:

***Marriage (Same Sex Couples) Act 2013
Shared Building Regulations***

Response by:

Christian Concern

Christian Legal Centre



Date: 31st October 2013

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Would like us to acknowledge receipt of your response?

Yes.

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

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Christian Concern is linked to a sister and separate organisation, the Christian Legal Centre, which takes up cases affecting Christian freedoms. www.christianlegalcentre.com

Question 1

a) Do you agree that the basic procedures for registering buildings should apply to informally shared buildings?

- 1(a).1 We disagree with the enactment of the Marriage (Same Sex Couples) Act 2013 (“the 2013 Act”) which has made the ‘marriage’ of same sex couples permissible in England and Wales.
- 1(a).2 We do not agree that the 2013 Act should enable same sex couples to ‘marry’ in religious ceremonies, or in buildings that are shared by churches under formal and informal agreements.
- 1(a).3 The provisions under the 2013 Act contravene the teachings of the Bible, which recognises marriage as a gift of God, ordained to join a man and a woman together for life.
- 1(a).4 Likewise, many churches and Christians will disagree with these provisions, and any future regulations that form a part of the implementation of the 2013 Act.
- 1(a).5 We do not agree that the rights of such groups will be adequately protected by the safeguards offered in the 2013 Act or the proposed regulations to allow shared buildings to be registered to perform same sex ‘marriages’.
- 1(a).6 The Government will be open to legal challenges on its proposed policy to allow churches to opt-out of performing same sex ‘marriages’, and ‘test cases’ will be brought against churches that do not wish to perform such ‘marriages’ on the basis of a conscientious objection.
- 1(a).7 Under domestic and European anti-discrimination laws, partners to a same sex ‘marriage’ are entitled to exactly the same rights as married heterosexual couples. This includes the right to have their wedding ceremonies conducted in a church.
- 1(a).8 It is highly likely that the European Court of Human Rights (ECHR) will overturn any conscience protections enacted by the Government on the basis of Article 14 (prohibition on discrimination on the grounds of sexual orientation).
- 1(a).9 Article 14 states that unlawful discrimination occurs when persons in similar a situation are treated differently without an objective and reasonable justification. It will be difficult for the Government to argue that there is a reasonable justification for legally permitting some couples to ‘marry’ in a church setting, whilst not others.
- 1(a).10 It follows that the Government’s assurances that churches will be not be compelled to perform same sex ‘marriages’ against their will are misleading and cannot be substantiated.

1(a).11 The proposed regulations simply offer one route through which legal challenges can be brought against churches, and pave the way for the Government to legislate in favour of removing the opt-out provisions for churches in the future.

(b) In particular do you consider that all of the relevant governing authorities should have to consent to the registration of the building or do you consider that just the consent of the proprietor or trustee of the building should be required?

1(b).1 We do not agree with the Government's proposals to allow shared buildings to be registered for the purposes of conducting same sex 'marriages' (please see our answer to Question 1(a)).

However, should the Government press ahead with its proposals:

1(b).2 All the relevant governing authorities of religious groups that share buildings, both formally and informally, should have the opportunity to block an application in the interests of protecting religious freedom and the right to freedom of conscience.

1(b).3 The consent of just the proprietor or trustee in favour of registering a shared building will drive out many churches and Christians from their place of worship who do not wish to share a building where same sex 'marriages' are performed.

1(b).4 We strongly disagree with any suggestion that the consent of the proprietor/trustee will be sufficient as a sharing group who is opposed to a registration will be "*open to seek new premises for its religious worship.*"

1(b).5 The Government's assertion that the freedom of employees to "resign and seek employment elsewhere" is sufficient to secure their right to religious freedom under Article 9 was rejected by the European Court of Human Rights in its judgment dated 15th January 2013 (*Eweida and Others v. the United Kingdom (nos. 48420/10, 59842/10, 51671/10 and 36516/10)*).

1(b).6 We oppose the Government's refusal to intervene in cases where the status of a governing authority is disputed by the proprietor or the other sharing groups wishing to apply for a registration.

1(b).7 Provision should be made for disputes to be resolved at a Government or court level in cases where the parties cannot reach an agreement on the issue amongst themselves, and this should not just be a matter for the proprietor (please see our answer to Question 1(c) below).

(c) What are your views on the concept of a "qualifying sharing church" for determining who is able to consent to registration of the building? In particular, do you think this approach strikes the right balance between protecting the rights of religious organisations that use a shared building and enabling religious

organisations who use shared buildings and who want to solemnize marriages of same sex couples to do so?

1(c).1 It is inappropriate to refer to the minimum nature of the use that a church must make of a building before it is entitled to prevent a registration under Regulation 5(2).

1(c).2 This concept has been created with the sole purpose of preventing churches from blocking an application that is otherwise supported by the remaining sharing groups.

1(c).3 The proposed approach does not sufficiently protect the rights of churches who are opposed to a registration and favours those who wish to conduct the 'marriages' of same sex couples.

1(c).4 All sharing churches should be entitled to block an application, however occasional or minimum their use, in the interests of safeguarding their rights to freedom of conscience and religion.

However, should the Government decide to press ahead with Regulation 5(10)(a):

1(c).5 The phrase "qualifying sharing church" implies that the concept is limited to Christian groups who are opposed to a registration decision, and should not be adopted.

1(c).6 The preferred approach would be to use the terms "qualifying sharing religious organisation" to ensure that the eligibility criteria is applied equally to "all religious groups, irrespective of their faith", as intended by the Government.

1(c).7 It should not be possible for an application to be made (or granted) where there is an on-going dispute over whether a sharing group fulfils the requirements of a "qualifying sharing church".

1(c).8 It is crucial to allow disputes to be resolved at a Government or court level in instances where the parties are unable to reach an agreement on any issues among themselves.

1(c).9 We do not agree with the Government's refusal to build into the regulations any form of appeals process that would permit a successful application to be challenged by a sharing group.

1(c).10 Such an approach would facilitate the on-going registration of a building that is potentially unlawful, and effectively silence a church that is subjected to an abuse of the registration process.

1(c).11 Provision should be made within the regulations for a church to appeal a successful application (either to the courts or to the Government) in instances where:

- i) A sharing group has been permitted to consent to a registration decision without fulfilling the criteria of a "qualifying sharing church" and;
- ii) A sharing church has been prevented from blocking an application despite meeting the requirements of Regulations 5(10)(a) and (b).

1(c).12 We reject the Government's assertion that any form of appeals process is unnecessary since sharing groups should "settle any disputes amongst themselves" and "no organisation is compelled to share a building".

1(c).13 It cannot be said with certainty that disputes of the nature outlined above will be resolved fairly between the parties, and we reject the notion that the freedom to seek new premises would secure the religious freedom of churches who are unfairly ousted from a registration decision (please see our answer to question 1(b)).

d) What are your views on the criteria for determining whether a religious organisation is a "qualifying sharing church?"

1(d).1 The concept of a "qualifying sharing church" will prevent a number of Christian groups from having a say in any registration decision, and should not be introduced.

1(d).2 Religious groups with informal arrangements are likely to find the "qualifying sharing church" criteria difficult to prove in the absence of any written contractual agreement.

1(d).3 This could result in a sharing church being ousted from a registration decision despite meeting the requirements of Regulation 5(10)(2).

1(d).4 As such, the "qualifying sharing church" criteria does not "protect" the rights of religious organisations wishing to prevent a registration, but rather poses a threat to their religious freedom.

However, should the Government decide to press ahead with Regulation 5(10)(b):

1(d).5 'Public religious worship' will need to be defined further.

1(d).6 This should include both Sunday worship and other church activities, such as youth groups, bible studies, prayer meetings, occasional conferences, formal and informal meetings, sport activities and rehearsals.

1(d).7 The minimum period of use suggested should be reduced to once in the six month period ending immediately prior to an application.

1(d).8 The requirement for groups to use a shared building for a certain amount of time (i.e. 30 minutes) should be removed.

Question 2

Do you agree that a form of protection along the lines suggested to prevent abuse of the cancellation application process is appropriate?

The timescales set out above have been suggested to us by religious groups as properly reflecting how this process is likely to work in practice. What do you think of the timescales suggested above: three months advance notice to the proprietor/trustee of a cancellation application and three months for the proprietor/trustee to respond (if it objects)?

- 2.1 We do not agree that it should be permissible for buildings that are shared by churches to be registered for the purposes of conducting same sex 'marriages' (please see our answer to Question 1(a)).

However, should the Government decide to press ahead with its proposals:

- 2.2 We strongly disagree with the proposed approach to the cancellation of an existing registration in relation to formally shared buildings subject to the 1949 Act.
- 2.3 These provisions are more concerned with safeguarding the interests of same sex couples, and offer little protection for churches who later regret a registration decision.
- 2.4 Churches who express an unwillingness to perform same sex 'marriages' should not be compelled to do so as this would substantially undermine their fundamental right to freedom of conscience and religion.
- 2.5 This means that a church should be entitled to submit an application from the moment that it decides against a registration, and should not be required to give three months advance notice to the proprietor/trustee.
- 2.6 Cancellation of the registration should take place immediately on receipt of the application and not after a period of nine months from the date the application is received by the Superintendent Registrar.
- 2.7 Any religious group sharing a building should be entitled to cancel an application, and should not be subject to the "qualifying sharing church" criteria.
- 2.8 A dispute as to the entitlement of a governing authority to make an application should be resolved at a Government or court level, and should not be a matter for the proprietor.
- 2.9 An appeals process should be offered in cases where a governing authority (or proprietor) has been prevented from cancelling an existing registration despite being entitled to do so under section 44B(4) of the 1949 Act.

Question 3

The Government seeks your views on the approach to the cancellation of the registration of informally shared buildings. In particular do you consider that any relevant governing authority should be able to apply to cancel the registration of an informally shared building, or should this just be a matter for the proprietor/trustee of the building?

- 3.1 We do not agree that it should be permissible for buildings that are shared by churches to be registered for the purpose of conducting same sex 'marriages' (please see our answer to Question 1(a)).

However, should the Government press ahead with its proposals:

- 3.2 The governing authority of any church sharing the building should be entitled to apply to cancel the registration of an informally shared building, and this should not just be a matter for the proprietor or trustee.
- 3.3 The concept of a “qualifying sharing church” will prevent a number of Christian groups from making a cancellation application, and should not be introduced or applied here.
- 3.4 All churches sharing a building, however occasional or minimum their use, should be able to apply for cancellation in the interest of safeguarding their right to freedom of conscience and religion.
- 3.5 Cancellation of an existing registration should take place immediately on receipt of the application and not after a period of nine months from the date the application is received by the Superintendent Registrar (please see our answer to Question 2).
- 3.6 A church should be entitled to submit an application from the moment that it decides against a registration, and should not be required to give three months advance notice to the proprietor/trustee (please see our answer to Question 2).
- 3.7 An appeals process should be offered in cases where a governing authority (or proprietor) has been prevented from cancelling an existing registration despite being entitled to do so under Regulation 6.

Question 4

The Government seeks your views on the above approach?

- 4.1 We do not agree that it should be permissible for buildings that are shared by churches to be registered for the purposes of conducting same sex ‘marriages’ (please see our answer to Question 1(a)).

However, should the Government press ahead with its proposals:

- 4.2 We strongly disagree that specific provision should be made within the regulations for the governing authorities of sharing groups wishing to perform same sex ‘marriages’.
- 4.3 This approach would facilitate registration by minimising disputes over the status of a consenting governing authority, whilst offering no similar protection for churches wanting to prevent or cancel a registration.
- 4.4 Provision should be made for the governing authorities of all sharing groups to safeguard the rights of churches who wish to block an application or overturn an existing registration decision.

Question 5

- a) **Do you agree that provisions are required in the regulations to make clear which sharing churches are able to solemnize marriages of same sex couples in a shared building? And:**
- b) **Do you agree with the processes that sharing churches will have to follow in this context?**

- 5.1 We do not agree that it should be permissible for buildings that are shared by churches to be registered for the purposes of conducting same sex 'marriages' (please see our answer to Question 1(a)).
- 5.2 We do not accept that Regulation 8 offers adequate protection for the rights of churches who do not wish to conduct same sex 'marriage' ceremonies on the basis of a conscientious objection.
- 5.3 The Government will be open to legal challenges on its proposed policy to allow churches to opt-out of performing such 'marriages', and the ECHR is likely to overturn any safeguards enacted by the Government on the basis of Article 14 (prohibition on discrimination on the grounds of sexual orientation).
- 5.4 The proposed shared building regulations simply offer one route through which legal challenges can be brought against churches, and pave the way for the Government to legislate in favour of removing any opt-out provisions for churches.
- 5.5 However, should the Government decide to press ahead with its proposals, a sharing group must be required to provide additional consent to *conducting* same sex marriages (and not just consent to registration) before it is permitted to perform such 'marriages'.
- 5.6 The Registrar General must be required to keep a clear record of which sharing groups have consented to performing same sex' marriages', and which have refused to provide any such consent.

Question 6

Do you agree that there ought to be a minimum period of use which the new sharing church should have made of the building before it should be entitled to apply to cancel an existing registration - and do you think that two years is the appropriate period for this?

- 6.1 We do not agree that it should be permissible for buildings that are shared by churches to be registered for the purposes of conducting same sex 'marriages' (please see our answer to Question 1(a)).

However, should the Government press ahead with its proposals:

- 6.2 We strongly believe that a registered building should cease to become registered for the purposes of conducting same sex 'marriages' in the event that the building is newly joined by a church.

- 6.3 Alternatively, the joining church should be entitled to apply to cancel an existing registration immediately without being subject to the requirements of Regulation 6(b)(i).
- 6.4 This is to reflect the position that a registration should be based on the consent of all the sharing groups, and that each group should be entitled to have a say whether the building is used for the purpose of conducting same sex 'marriages' (please see our answer to Question 1).
- 6.5 The Government's proposed approach would safeguard the interests of religious groups wishing to perform same sex 'marriage' ceremonies, whilst undermining the rights of churches who do not agree with a registration decision.

However, should the Government decide to introduce a minimum period of use:

- 6.6 A two year period under Regulation 6(b)(i) would be inappropriate and unfair, and should be reduced to a minimum of 3 months.
- 6.7 A church should be entitled to cancel a registration immediately if it is able to demonstrate a commitment towards using the building for the minimum period introduced by the Government (whether 2 years or less).

Question 7

Do you agree with the proposed process for when a building ceases to become shared?

- 7.1 We agree that an existing registration should be cancelled automatically where the remaining sharing church had not previously consented to performing same sex 'marriages'.
- 7.2 Any cancellations should take effect immediately on receipt of notice by the Superintendent Registrar to ensure that the remaining church is not compelled to perform same sex 'marriages' against its will.
- 7.3 Should the Government press ahead with its proposals to permit registration to continue where a remaining church had consented to performing same sex 'marriages', it should also make provision for registration to cease where a newly joining church does not agree with an existing registration.

Question 8

Do you agree with the approach to the situation where the identity of sharing churches changes?

Any cancellations under Regulation 11 should take effect as soon as notice is received by the Superintendent Registrar to ensure that any remaining churches are not compelled to perform same sex 'marriages' against their will.

Question 9 Do you have any additional comments on the Government's approach to these draft regulations?

- 9.1 We re-iterate that the 2013 Act poses a significant threat to the religious freedom of churches who do not wish to perform same sex 'marriages' on the basis of a conscientious objection.
- 9.2 The Government will be open to legal challenges on its proposed safeguards to allow such churches to opt-out of performing such 'marriages', and 'test cases' are likely to be brought against churches that refuse to participate.
- 9.3 It is highly likely that the European Court of Human Rights will overturn any conscience protections due to the effects of Article 14 (prohibition on discrimination on the grounds of sexual orientation).
- 9.4 The Government's assurances that churches will not be compelled to perform same sex 'marriages' against their will are therefore groundless and cannot be substantiated.