

ISSUES RAISED BY THE EQUALITY ACT (SEXUAL ORIENTATION) REGULATIONS 2007

A note produced by the Baptist Union of Great Britain, the Methodist Church and the United Reformed Church

What are these Regulations?

They are being made under the provisions of the Equality Act 2006 (“the Act”) and are required by that Act. They were published on 7 March 2007 and must be debated and approved by both the House of Commons and the House of Lords before they can be made. Parliamentary rules mean that Parliament cannot alter the Regulations; they can only approve or reject them. If they are approved by Parliament, they will come into force on 30 April 2007.

The purpose of the Act as expressed in the Government’s explanatory memorandum is to:

- “establish the Commission for Equality and Human Rights ...and define its purpose and functions;
- make unlawful discrimination on the grounds of religion or belief in the provision of goods, facilities and services, education, the use and disposal of premises, and the exercise of public functions;
- enable provision to be made [about] discrimination on the grounds of sexual orientation in the provision of goods, facilities and services, education, the use and disposal of premises and the exercise of public functions;
- create a duty on public authorities to promote equality of opportunity between women and men and prohibit sex discrimination and harassment in the exercise of public functions.”

Section 81 of the Act gives the power to make the Sexual Orientation Regulations and section 81(3)(a) says that the Regulations may make provision similar to that in Part 2 of the Act. Part 2 makes it unlawful to discriminate on the grounds of religion or belief; the provision for this is in the Act itself; there is no need for Regulations.

So these Regulations are applying provisions to discrimination on the grounds of sexual orientation which are very similar to those which were made by the Act itself about discrimination on the grounds of religion or belief.

It is important to acknowledge that these Regulations prohibit discrimination on the grounds of sexual orientation generally – that is, the protection is given to both heterosexual and homosexual orientation. However, many

congregations are concerned about what the Regulations might mean for them as far as same sex relationships are concerned, and the rest of this paper concentrates on those issues.

Why does this create problems?

There is no doubt that the question of whether or not same sex relationships are compatible with Christian belief is a difficult one for the church, as Christians have passionately held views on both sides. But that is **not** the question raised by these Regulations.

Whatever our own views, we live in a society where same sex relationships are increasingly regarded as a valid life choice and where the law recognises the mutual commitment and consequent rights of same sex partners through civil partnerships.

Many people in the UK do not share our Christian faith, but it is right that we should not suffer discrimination because we are Christians. Equally, same sex couples, whose partnership is acceptable to society, not contrary to the law and, in some cases, gives the partners specific legal rights, should not suffer discrimination because of their sexual orientation.

It is, therefore, important to be clear exactly what the problem is - and it is not an argument about whether same sex relationships are right or wrong.

The problem raised is whether these Regulations permit Christians who believe that same sex relationships are wrong and should not be condoned, to behave as they believe to be right. What happens when one person's right to freedom to act on their beliefs comes into conflict with another person's right not to face discrimination?

What are the “goods and services” to which the Regulations refer?

In considering this whole issue, it is important to be clear that “services” does not mean “worship services”. It means such activities as the provision of accommodation or entertainment, access to places the public are permitted to use, facilities for banking or credit, or the services of a trade or profession

Is any provision made for the implications of religious belief in the regulations?

The Regulations provide for a number of exemptions in relation to religious belief:

- The exemptions cover organisations which exist to practice, advance, or teach religion or belief, or to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief. The exemptions do, therefore, apply to churches. They do not apply to organisations whose purposes are mainly or solely commercial (eg Christian bookshops) nor in relation to education

- Under the Regulations a religious organisation would be permitted to restrict membership or participation, or to restrict the provision of goods or use or disposal of premises in respect of a person's sexual orientation
- A minister would be permitted to restrict participation in activities or to restrict the provision of goods, facilities or services in relation to his/her functions or the organisation in respect of a person's sexual orientation.
- A minister is defined as a minister of religion or other person who performs functions related to religion and holds an office in/is accredited by that organisation
- These restrictions *only* apply where it is necessary to comply with the doctrine of an organisation or so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers
- The exemptions *do not* apply where an organisation is acting under contract on behalf of a public authority (eg where an organisation provides social services on behalf of a local authority)

This means that a congregation which does not wish to let its premises to an organisation which advocates same sex relationships can still refuse to do so and will not commit an offence. Equally, there is nothing in these exemptions which compels churches to take advantage of them, so that congregations who are willing to let their premises to such organisations will continue to do so.

What is the place of freedom of conscience?

The exemptions do not apply to commercial organisations, so, for example, hotels with a specifically Christian ethos are excluded. Nor do they apply to organisations which are being funded from the public purse, such as adoption agencies.

Should such organisations not be permitted to act according to the conscience of their staff?

The first question to ask in any such case is – what does conscience dictate in this situation?

This is something that each individual, congregation and organisation will have to work out in their own particular circumstances, but the decision is not going to be clear cut.

On the one hand, although Christians differ significantly in the ethical positions which they derive from their understanding of their faith, it is probably true to say that no Christian would wish to appear to condone the kind of activity which they believe to be wrong.

On the other hand, Christians are commanded to love their neighbour as themselves (Matt 22 v 39), not to worry about the speck in someone else's eye when they have a log in their own (Matt 7 v 3), and not to throw stones at others unless they are confident that there is no fault in them (John 8 v 7).

This means that even Christians who share the same ethical stance on a particular issue might make different decisions about the right thing to do. Some may decide that they should make a stand against practices they believe are wrong while others, with the same beliefs, may feel their church should offer hospitality to people who face discrimination.

So the right decision under these Regulations is not obvious even for Christians who believe that same sex relationships are wrong; they will have to make the judgement in the light of the particular circumstances in which the issue arises.

The second question to ask is, what is the obligation of the secular State with regard to freedom of conscience?

The clearest statement of this is Article 9 of the European Convention on Human Rights, which says:

“ARTICLE 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others. “

It is important to recognise that as far as the duties of the State are concerned, the first clause applies equally to those who believe that same sex relationships are right and those who believe that they are wrong. The issue, therefore, becomes where the State should find the balance between protecting the conflicting rights of these two groups.

These regulations have chosen to define the balance as follows:

- Public money cannot be used to fund discriminatory practice. If people in a same sex relationship, whether or not they are in a civil partnership, want to access a publicly funded service, they should be able to do so, whoever the provider may be.
- Organisations, including small businesses, which are selling goods and services to the public should not be able to withhold those goods or services from people in a same sex relationship

- However, organisations whose primary purpose is religious, and who offer services to the public as part of their living out of their faith, should be permitted to do this in a way which reflects the faith based convictions of their members.

The question to be asked here is whether the regulations have found the right balance. If not, what is the right balance?

On the question of public money, most people will be familiar with the problem for Catholic Adoption Agencies, which consider it wrong to place children with same sex couples. The Regulations allow them a transition period until 31 December 2008; during that time, if a couple in a same sex relationship come to them asking to adopt a child, the Regulations say that they must refer that couple to an organisation that will be willing to place a child with them; we understand that this is current practice for most, if not all of them. After 31 December 2008, as charitable organisations operating within the framework of a religion or belief, they will be exempt if they do not accept public funding, but this might not be financially viable for them.

On commercial organisations, there are very few services that Christians might offer which could be seen as condoning same sex relationships, but one example which has been suggested is that a Christian professional photographer, who believed same sex relationships to be wrong, might not be able to refuse to cover a civil partnership ceremony even if she or he considered that to take the photographs of such a ceremony amounted to condoning it.

It is not for the State to pronounce on ethics; freedom of conscience means that we can all make up our own minds. But there will be occasions when the State has to mediate between conflicting views. What principles should it use in drawing the line? And has it struck the right balance in this instance?

What is the place of freedom of expression?

The equivalent Regulations for Northern Ireland prohibit harassment on the grounds of sexual orientation; there is concern that this might mean that people who believe that same sex relationships are wrong cannot say so publicly, including in church, although this will not be clear until the Northern Ireland Regulations are tested in Court. These Regulations for England, Scotland and Wales do not include that provision, so the issue of freedom of expression does not arise.

How should Christians react to these Regulations?

Christians will take different views as to what they should do as a result of these Regulations. This paper sets out the issues and poses the questions, but makes no attempt to answer them.

However, it does suggest that in coming to their conclusion on this issue, Christians should:

- Be very clear that the issue is about how the State should balance two sets of rights; it is not about whether same sex relationships are right or wrong.
- Recognise that through the Equality Act 2006 people of faith now enjoy the equivalent protection in law to that being instituted by these Regulations in relation to sexual orientation.
- Make a considered judgement as to what their faith requires of them, balancing Jesus' command that his followers love one another as he has loved them (John 15 v 12) with a desire not to appear to condone or collude with what they believe to be wrong.

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