



EQUAL MARRIAGE – A RESPONSE TO AIDAN O’NEILL QC’S LEGAL OPINION

During the drafting and introduction of the Marriage (Same Sex Couples) Bill, there have been several issues raised by opponents to the Bill which seek to suggest that the legislation is open to legal challenge.

These concerns predominantly centre around the notion that there is insufficient protection for religious organisations and individuals who hold the religious or philosophical belief that marriage should only be between a man and a woman and who therefore oppose same-sex marriage. **We have considered these concerns very carefully and are confident that they are misplaced.** Our response to them is set out below.

A [fuller explanation of the protections in place](#) (PDF 346kb) is also available. This is the Government’s detailed position on the scenarios devised by the Coalition for Marriage for Aidan O’Neill QC to advise on.

Public sector chaplains

Aidan O’Neill QC says that public sector chaplains could be sacked if they express the belief that marriage should be between a man and a woman.

This is incorrect. The view that marriage should be between a man and a woman is mainstream and entirely lawful. People already express views about a whole range of issues – such as that civil partnerships are contrary to religious teaching, that people should not have children outside marriage, etc. Same-sex marriage will not be treated any differently.

While expressing views – either at work or outside work – which are at odds with an employer’s policy can affect employment in some circumstances, expressing a lawful view about marriage would not affect the chaplain’s ability to carry out his work or the reputation of his employer, so dismissing him would be unlawful. The chaplain in this scenario has a number of protections. These include the Equality Act 2010, which protects employees from direct and indirect discrimination because of religion or belief, and also unfair dismissal. Clause 2 of the Bill ensures that a chaplain can legally refuse to conduct a same-sex marriage ceremony. Further, as a minister of religion, a chaplain has a justifiable expectation that he will be allowed to act in accordance with his beliefs. The public sector equality duty would not justify a wrong or oppressive decision by an employer.

Teachers

Aidan O'Neill QC says that teachers could be sacked for opposing same-sex marriage, or for failing to endorse same-sex marriage in the classroom.

Teachers will continue to have the clear right to express their own beliefs, or those of their faith - such as that marriage should be between a man and a woman - as long as it is done in a professional way. Schools will not acquire a power to dismiss teachers who refuse to teach views about same-sex marriage which are against their conscience.

As with any area of the curriculum, teachers will of course be expected to teach the factual position that under the law, marriage can be between opposite-sex couples and same-sex couples. There are many areas within teaching, particularly within faith schools, where subjects such as sex and relationship education and issues such as divorce are taught with sensitivity. The guidance governing these issues is the same guidance that will govern how same-sex marriage in the classroom will be approached. No teacher can be compelled to promote or endorse views which go against their beliefs.

Parents

Aidan O'Neill QC says that parents who believe that marriage should be between a man and a woman would not be able to withdraw their children from lessons which endorse same-sex marriage.

Teaching should be professional, sensitive, not involve political indoctrination and be respectful of sincerely-held beliefs. On this basis, there is no reason why pupils should not be taught factual information about marriage for same-sex couples.

All parents have the right to withdraw their children from any or all parts of sex education, with the exception of the National Curriculum for Science, which covers teaching about the technical biology of reproduction. Objections by parents to a curriculum can occur for all sorts of reasons, and objections relating to same-sex marriage will be dealt with no differently.

Foster carers

Aidan O'Neill QC says that local authorities could refuse applications to become foster parents from couples who believe that marriage should be between a man and a woman.

Views on marriage of same-sex couples would not justify a refusal to allow individuals to act as foster carers, as such views in themselves would not impact on how a foster carer cares for a child. People have the right to express their religious beliefs and should not be discriminated against for doing so. Local authorities are under a duty to place each child in the most appropriate placement available, and to safeguard and promote the child's

welfare. Irrelevant considerations of religious or cultural background should not prevent children being placed with loving and stable families.

Marriage registrars

Aidan O'Neill QC says that a marriage registrar who believes that marriage should be between a man and a woman would be forced out of her job.

There is a balance to be struck between the rights of same-sex couples and the rights of those who believe marriage should be between a man and a woman. Under the Bill, marriage registrars will be responsible for marriages of same-sex as well as opposite-sex couples. Public officials should offer their services to all, without discrimination based on the sexual orientation of customers.

Hire of public facilities

Aidan O'Neill QC says that local authorities could refuse to let churches who believe that marriage should be between a man and a woman use publicly-owned buildings.

This is not true and would be against the law. A policy of only hiring out facilities to those who have religious or philosophical views with which the local authority agrees would be indirectly discriminatory against many religious people and organisations. The public sector equality duty would not justify such an otherwise wrong or oppressive decision.

Non-Anglican weddings

The Coalition for Marriage says that non-Anglican churches which refuse to conduct same-sex marriage ceremonies could end up in a case before the European Court of Human Rights.

The European Convention on Human Rights does not impose an obligation on States to grant same-sex couples the right to marry, and Aidan O'Neill QC's opinion tentatively accepts that such a case would not succeed.

The Convention protects the religious freedom of individuals and religious organisations and their members, and the Bill addresses this by allowing religious organisations to "opt in" to conducting same-sex marriages and protecting those organisations which do not wish to do so. Any requirement on a religious organisation or individual minister to marry same-sex couples contrary to their doctrines would infringe their right to religious freedom.

Aidan O'Neill QC says that non-Anglican churches could be refused registration of their buildings to conduct weddings because of their opposition to same-sex marriage.

This is incorrect. Under the Marriage Act 1949, there is no discretion for the Registrar General in this matter. As long as the proprietor or trustee of the building provides an application which meets the statutory criteria, the Registrar General must register the building for the solemnization of marriages. Although the Registrar General is subject to the public sector equality duty, that would not override her statutory functions where no discretion is given.

Church of England

Aidan O'Neill QC says that a ban on the Church of England conducting same-sex marriages could breach the European Convention on Human Rights.

The Bill provides equivalent protection for all religious organisations. Because of the unique legal position of the Church of England, the Bill contains specific measures to provide this protection for it. Unlike other religious organisations in this country, Church of England and Church in Wales clergy have a specific legal duty to marry parishioners; the Bill makes clear that this duty is not extended to same-sex couples. It also ensures that Anglican Canon law does not conflict with civil law and can continue to state that marriage is between one man and one woman. Like other religious organisations, the Church of England will be able to decide for itself whether to allow the marriage of same-sex couples according to its rites. There is therefore no reason to think that this protection would not be upheld by the European Court of Human Rights.

Government Equalities Office
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