

Same-sex civil unions and religious freedom

A briefing note

Introduction

The introduction of civil unions for same-sex couples could have severe and far-reaching consequences for the Churches, for non-Christian religions and for individual religious believers unless they are granted certain specific protections in law.

This briefing note will outline the impact of same-sex civil unions/marriage on religious freedom in other jurisdictions and will outline how similar legislation here could affect religious freedom in Ireland.

The overseas experience:

Countries such as Spain, Britain and parts of the US have introduced same-sex marriage/civil unions in recent years. One result has been a raft of cases taken against religious organisations and religious believers on the grounds that they are violating the rights of same-sex couples.

Here are some examples of those cases:

■ **In New Jersey**, a Methodist church was successfully sued when it refused to hire out its hall to a lesbian couple who wished to celebrate the registration of their union. Note that it was not the ceremony *per se* that they wished to hold in the hall, but the celebration afterwards.

■ **In Spain**, a judge has been prosecuted for delaying the adoption of a child by a lesbian couple. The judge, Fernando Ferrin Calamita, delayed granting an adoption order until he obtained a report outlining the possible effects on a child of being raised by two people of the same sex as opposed to a man and a woman.

■ **In Britain**, Catholic adoption agencies have been told that they must accept applications for adoption from same-sex couples. The same thing has happened in Boston where Catholic adoption agencies have closed rather than be forced to violate their ethos.

■ **In California**, a Christian dating agency was successfully sued because it would not match up same-sex couples.

■ **Also in California**, a court unanimously ruled against two San Diego fertility doctors who would not treat a lesbian couple but did refer them to another doctor.

■ **In New Mexico**, a state civil-rights commission fined an evangelical wedding photographer \$6,637 because he would not photograph a same-sex commitment ceremony.

■ In 1996 **San Francisco City** Authorities voted in favour of a measure that forced all organisations in receipt of public funding to extend the same benefits they provide to spouses of employees to the same-sex partners of employees. At considerable financial cost, the archdiocese of San Francisco decided it had no choice but to extend those benefits to anyone in a caring, dependent relationship.

The Irish situation

Clergy in Ireland could not be forced to preside at same-sex civil union ceremonies, nor would they have to allow their churches or other buildings to be used for such ceremonies, nor could they be prevented from teaching the orthodox Christian (and Muslim and Jewish) belief with regard to homosexuality.

However, religious organisations and believers in Ireland could be adversely affected in some of the ways listed, chiefly because of the Equal Status Act 2000. Essentially, much will depend on how this Act, and civil partnerships legislation, is reconciled with the Constitutional provisions concerning religious freedom unless certain explicit protections are enshrined in legislation.

The Iona Institute has obtained a legal opinion on how the proposed Civil Partnerships Bill could affect religious freedom in Ireland. A full copy of this can be furnished upon request. However, here is a summary of its main findings:

■ **Church and school halls:** Where a church hall has been used for non-religious purposes, then it may also have to be rented out to same-sex couples who wish to celebrate their unions in the hall following their civil registration ceremony. The same applies to halls owned by schools belonging to a particular denomination.

■ **Employees of religious organisations:** Employees of religious organisations may be able to enter same-sex civil partnerships despite the teaching of their employer in this regard, especially if the organisation in question was not directly involved in teaching the faith; for example, if the person was in a support staff role. In addition, the religious employer could find itself forced to recognise the partner of the employee for pension, parental leave and maintenance purposes.

■ **Religious providers of a service:** Although it is not covered in the legal opinion, further advice to us is that a Christian photographer (for example) could be forced to be the photographer at a same-sex civil unions ceremony if asked. A Christian printer may be forced to print the invitations to the ceremony and celebration.

■ **Civil registrars could be found guilty of an offence where they conscientiously object to facilitating a same-sex civil partnership:** Head 20 of the 'General Scheme of Civil Partnership Bill' says that a registrar who, "without reasonable cause, fails or refuses to give a civil partnership registration form to one of the parties to an intended civil partnership"... "is guilty of an offence."

This is in strong contrast to the situation in Britain. There, a Christian registrar, Miss Lillian Ladele, asked to be exempted from performing civil partnership registrations. Under British law she could not be found guilty of an offence for asking to be exempted, as would appear to be the case under the proposed Irish law. Miss Ladele claimed she was subjected to harassment by her colleagues as a result of her decision, and she later won an anti-discrimination case against her employer, Islington Council. (Note: This case is under appeal).

Conclusion: It is clear that civil partnership legislation as enacted overseas has had very serious implications for religious freedom and it is entirely possible that there may be similar implications here unless the Churches, other religious organisations, and individual religious believers are given appropriate protections.