

# The Equality Bill 2009

(Briefing: 20/1/10)

## Summary

Though it contains much good, the Equality Bill 2009 also includes worrying provisions which threaten to reduce the freedom of churches and Christian organisations to choose to employ Christians and their freedom to require their employees to commit to a lifestyle which is in accordance with the Bible's teaching.

On 2<sup>nd</sup> December 2009 the Bill was overwhelmingly passed (by 338 to 8) at its final reading in the House of Commons. The key sections of the Bill are most likely to be debated in the House of Lords on 25<sup>th</sup> January 2010 with a possible final vote in the Lords shortly after that. The Bill will then return to the Commons for a likely final vote there. Please pray and act by 25<sup>th</sup> January (see further below).

## Introduction

### Equality

Equality is an easy topic for Christians to talk about. The Bible teaches that, crucially, every person is created in God's image and God loves us all "not wanting any to perish, but everyone to come to repentance"<sup>1</sup>. Against the cultural norms of the day, the nation of Israel was told by God that "the foreigner living with you must be treated as one of your native-born. Love him as yourself"<sup>2</sup>, a sentiment echoed in Paul's words that "there is no Greek or Jew, circumcised or uncircumcised, barbarian, Scythian, slave or free, but Christ is all and is in all"<sup>3</sup>. And the most demanding of all calls to equality was that made by Jesus when he explained the second half of the greatest commandment was to love your neighbour (whoever they may be) as yourself.

It is a blessing and a privilege that we live in such a fair-minded and equality focussed society and Christians should thank and support the Government for much of what they have done and are continuing to do to tackle inequality. In doing so they are following the example set by Jesus who was radical in paying no heed to social status, race, sex or disability (to use the terminology of the Equality Bill). He looks at people's hearts. It was Jesus who broke social taboos by speaking alone with a woman, and indeed a woman from a marginalised racial background. It was Jesus who spent more

time with the socially and economically deprived than the great and the good and Jesus who again and again had compassion on those suffering from physical and mental afflictions who lived on the outskirts of society.

### Morality

But equality does not apply to all things. In particular, God has made it clear that He does not view as equal all the choices we make about how to live our lives. Some choices are better than others. This is where key parts of the Equality Bill go wrong. The Bill extends beyond banning discrimination on grounds such as race and sex, to banning it in relation to the choices people make about their religious beliefs and sexual practices.

The only source of authority regarding which beliefs and sexual practices are right and which are wrong is the Bible. Not what the Government, nor even Christians, say – how could any human determine morality for other humans? The Old Testament law explains that it is wrong to worship anything or anyone other than the Lord God<sup>4</sup> and that sexual immorality such as adultery, incestuous relationships and homosexual practices<sup>5</sup> are also wrong. Jesus confirmed these laws apply to us today, saying that not one dot on an “i” or one cross on a “t” had been removed from the Old Testament rules<sup>6</sup>. His teaching on this was affirmed again and again in the New Testament<sup>7</sup>.

### Love and holiness

But as clear as the Bible’s teaching on immorality and false beliefs, is the Bible’s instruction that we should love people who follow false beliefs or practise immorality and welcome them into the Church to help them find the forgiveness and freedom that all Christians know. It is obvious that people who do not keep the Bible’s moral standards should not be ill-treated or ostracised in any way by Christians because all Christians fall short of the Bible’s standards as well and need God’s grace and daily forgiveness: “Righteousness from God comes through faith in Jesus Christ to all who believe. There is no difference, for all have sinned and fall short of the glory of God and are justified freely by his grace through the redemption that came by Christ Jesus”<sup>8</sup>.

But our own shortcomings as Christians do not mean we should be slow to publicly speak out about right and wrong: we are pointing to the example of Jesus, who did live a perfect life, not to our own example. And the Church must take a public stand when confronted with a piece of legislation which does not reflect the truth of the Bible (and which therefore makes it less likely that people will be conscious of the need to repent<sup>9</sup>) and which makes it unlawful for many churches and Christian organisations to obey the Bible themselves. Most Christians will not expect a secular Government to legislate based on the Bible, but this is no reason not to exercise our democratic right to speak up for laws based on truth.

It is not that Christians have a preoccupation with the issues raised by the Bill such as transsexuality and homosexuality, as distinct from other moral issues, but it is on these that the Government is legislating. The fact they are controversial issues is no reason to be mute: Jesus did not avoid hard words, even when it led to many followers deserting him<sup>10</sup>. A loving, humble and uncompromising public response to this Bill is needed from every church and Christian.

<sup>1</sup>2 Peter 3:9 <sup>2</sup>Lev 19:34 <sup>3</sup>Col 3:11 <sup>4</sup>Exodus 20:3-4 <sup>5</sup>Lev 18 <sup>6</sup>Matt 5: 17-20 <sup>7</sup>Romans 1: 18-32; Acts 15:29; 1 Cor 6:9 etc <sup>8</sup>Romans 3:22-24 <sup>9</sup>Romans 3:20 <sup>10</sup>John 6:60-66

## Legal analysis

### The freedom for churches and Christian organisations to require their employees to commit to a Christian lifestyle

#### The current position

The Employment Equality (Sexual Orientation) Regulations 2003, Regulation 7 (see Appendix, below), currently regulates when and whether a Christian organisation or church can refuse to employ someone on the ground of their sexual orientation. Neither the Regulations nor the courts have recognised a distinction between homosexual *orientation* and homosexual *practices* and so the Regulations make it unlawful to refuse to employ someone because they are living in a manner which is inconsistent with the teaching of the Bible.

However, a limited exception is granted in the Regulations to allow Christian organisations and churches to apply requirements in relation to sexual morality to their prospective employees. There is one test for organisations and one test for churches. In relation to Christian organisations, the law makes it unlawful to reject a job application on the ground of the applicant's sexual orientation / practices *unless* it is a "Genuine Occupational Requirement" ("GOR") that the post in question is filled by someone who is not of that sexual orientation.

In relation to churches (or other "organised religion" employment), the law makes it unlawful to reject a job application on the ground of the applicant's sexual orientation / practices *unless* the church seeks to reject the application in order to comply with doctrine or in order to avoid conflicting with the strongly held religious beliefs of a significant number of Christians.

However, churches cannot apply the exception to all their posts. The Government's view was that the exception related to "a very narrow range of employment: ministers of religion, plus a small number of posts outside clergy, including those who exist to promote and represent religion [...] It would be very difficult for a church to argue that a requirement related to sexual orientation [or practice] applied to a post of cleaner, gardener or secretary". The leading High Court case on the 2003 Regulations largely agreed with this view (*Amicus v Secretary of State for Trade and Industry* (2004)).

That approach makes it likely a church could not require its office staff to commit to the Bible's teaching on sexual morality and in that sense is to be criticised – a church should be able to apply high standards of moral integrity to such posts as administrator and warden. In small churches, in particular, such roles often carry with them a key ambassadorial and even pastoral element. If those individuals are involved in any extra-marital sexual relationships, whether homosexual or heterosexual, this brings the church itself, and possibly Christianity as well, into disrepute.

#### The proposed new position

The Equality Bill 2009 will replace the 2003 Regulations. The Equality Bill provisions about when / whether a Christian organisation or church can refuse to employ someone on the ground of their sexual orientation / practices are found in Schedule 9, Part 1 (see Appendix, below).

In relation to Christian organisations, the wording used in the Equality Bill is very similar to the wording used in the current law. In that sense the Equality Bill is unwelcome because it maintains a position that appears to make it very hard for Christian organisations to require their employees to commit to living a lifestyle in accordance with the Bible's teaching (albeit there is no case law on this yet).

It is in relation to churches (or other "organised religion" employment) that the big changes are made. The Government actually maintains that the Equality Bill does not actually change the substance of the current law at all, despite substantial changes to the wording, but this view was discredited by revelations during the House of Commons debate on the Equality Bill on 2<sup>nd</sup> December 2009 that behind closed doors the Government had given an undertaking to the European Commission that the Equality Bill *did* narrow churches' freedom.

### **THE MAIN CHANGES FOR CHURCHES:**

- 1) The Equality Bill adds a new requirement that where a Church refuses to employ a practising homosexual in order to comply with the doctrines of the religion or to avoid conflicting with the strongly held views of a significant number of the religion's followers, the church must now prove their decision is a "proportionate" means of complying with the doctrine of the religion or the views of the religion's followers.

It is not hard to imagine an atheist judge looking at a church which has a vicar and two curates and deciding that whilst it is proportionate to require one or two of them not to be practising homosexuals, it is not proportionate to require all three to have such a lifestyle in order to comply with a doctrine about sexual morality which is not universally shared in the Church.

This is a very serious change to the law with the Government choosing to intervene in how a church is run, reducing the freedom for churches to uphold doctrine in the manner they see fit. It should not be for a court to decide what moral standards are and are not legitimate in a church, but that is exactly what the Bill does.

- 2) Whereas the 2003 Regulations do not define "for purposes of an organised religion", the Equality Bill gives this a very restricted definition. The initial draft described it as employment which: "wholly or mainly involves— (a) leading or assisting in the observance of liturgical or ritualistic practices of the religion, or (b) promoting or explaining the doctrine of the religion (whether to followers of the religion or to others)."

This definition might not have included many vicars, pastors and ministers where they undertook pastoral duties, work in the community and social action for more than half of the working week. Thankfully the Government has responded to lobbying and a new clause has been put forward in the last few days which contains a revised definition:

**"Employment is for the purposes of an organised religion only if — (a) the employment is as a minister of religion, or (b) the employment is in another post that exists (or where the post has not previously been filled, that would exist) to promote or represent the religion or to explain the doctrines of the religion (whether to followers of the religion or to others)."**

This is undoubtedly an improvement, expressly covering ministers of religion, but still leaves a worrying gap. There are myriad employment positions within churches which revolve around pastoral work, social action and practical service which do not fit easily into the definition of a role which *exists to promote, represent or explain* Christianity.

Would an assistant youth worker fit into that definition? A trainee minister who spends most of their week studying? A prayer coordinator? The head of a church-based homeless shelter or debt counselling service? Already, under the current law, it has been held that although the Anglican post of Diocesan Youth Officer did fall within the scope of the church exception, a Bishop had not been entitled to conclude that the applicant for the post breached the Church of England's position on sexuality and employment. This was notwithstanding the fact the applicant had been in a long-term homosexual relationship until shortly before he applied for the post: *Reaney v Bishop of Herefordshire* (2007)

To give one example of how the new law might apply, if a church, setting up an expressly Christian relationship guidance and counselling service, was to advertise for the post and the candidate with the best qualifications was a practising homosexual in a Civil Partnership, it would be unlawful for the church to refuse to employ them. And yet it would be complete hypocrisy for a church to employ such an individual when the Bible teaches that we must not ostracise non-Christians who engage in sexual immorality, but within the Church "you must not associate with anyone who calls himself a brother but is sexually immoral or greedy, an idolater or a slanderer, a drunkard or a swindler" (1 Cor 5:9-11).

The Explanatory Note accompanying the Bill originally stated that the exception allowing a church not to employ a practising homosexual "would not apply to a requirement that a church youth worker or accountant be heterosexual". This has now been amended to read that the exception "is unlikely to permit a requirement that a church youth worker who primarily organises sporting activities is celibate if they are gay, but may apply if the youth worker mainly teaches Bible classes". But how can a practising homosexual youth worker, however small the proportion of time they spend on teaching Bible classes (10, 20, 30%?), teach that the young people in the church should "in view of God's mercy, offer your bodies as living sacrifices, holy and pleasing to God" (Romans 12:1) and "Put to death, therefore, whatever belongs to your earthly nature: sexual immorality, impurity, lust, evil desires and greed, which is idolatry" (Col 3:5) if they are openly and unrepentantly not doing so themselves?

- 3) The added problem with this narrowing of churches' freedom to employ who they want is that the Equality Bill applies more widely than the 2003 Regulations. It applies to, for example, decisions in relation to the sex of an employee (e.g. a Catholic Church wanting a male priest), a requirement not to be a transsexual and a requirement not to be in a civil partnership or not to have been in a civil partnership which ended because of relationship breakdown rather than as an act of repentance. These are not entirely new legal provisions: in relation to sex and transsexuals / gender reassignment the current law is found in the Sex Discrimination Act 1975 and although different wording is used, in relation to Civil Partnerships there is an analogous section in Regulation 3(3) of the 2003 Regulations.

So it is not just that a church will be unable to refuse to employ a practising homosexual vicar or minister in the scenarios given above, they will also not be able to refuse to employ an applicant who is a transsexual or in a Civil Partnership. Nor will a church be able to refuse to employ a woman, whatever the church's doctrinal views about leadership.

## The freedom for churches and Christian organisations to require their employees to be Christians

### The current position

The Employment Equality (Religion or Belief) Regulations 2003, Regulation 7 (see Appendix below), currently regulates when and whether a church or Christian organisation can choose to employ Christians and, for example, reject applications from Muslims / atheists on the basis they do not share the fundamental beliefs and ethos of Christianity. There is one test which applies.

The Regulations make it unlawful to reject a job application on the grounds someone is not a Christian *unless* it is a “Genuine Occupational Requirement” (“GOR”) that the post in question is filled by a Christian. It is in limited circumstances that a GOR is made out. For example, an atheist teacher successfully sued a Roman Catholic School that had said a Pastoral Care post could only be filled by a Christian – the appeal court said that there was no GOR in that scenario (see *Glasgow City Council v Mr McNab* (2007)). In *Sheridan and Hender v Prospects* (2008) a court held it was unlawful for a Christian organisation (established to serve the Church community by providing a distinctively Christian service to people with learning disabilities) to require all of its staff to be Christians.

There is no case law on the freedom of churches to require their employees to be Christians, but it is thought that the position would be similar to that outlined above in relation to sexual orientation / practices.

### The proposed new position

The Equality Bill 2009 will replace the 2003 Regulations. The Equality Bill provisions about when and whether a Church / Christian organisation can choose to employ Christians, as opposed to Muslims / atheists etc are found in Schedule 9, Part 1, Paragraph 3 (see Appendix, below).

The wording used in this part of the Equality Bill is very similar to the wording used in the current law. The original explanatory notes to the Bill claimed it was intended to make no changes to the existing law. This in itself is not something Christians should be happy with because the *status quo* leaves many Christian organisations unable to employ Christians (see above) but in any case, it is questionable that the Bill does in fact maintain the present situation.

In the Explanatory Notes to the Bill the Government gave an example of how the Bill would operate, and that example arguably goes beyond the present law, suggesting that a job must be one which requires “in-depth” understanding of the religion’s doctrines to attract a GOR. This implies that because a pastoral carer employed by a Christian charity does not need to be skilled in theology, the Charity could not require them to be a Christian. It can also be read from the example that it is only very senior positions in a Christian organisation that attract a GOR. For Christians this misses the point entirely – what good is it to have a Christian head of an organisation if those working on the ground, the hands and feet of Jesus Christ, do not believe in Jesus? Surely then it is no longer a Christian organisation?

The example in the Explanatory Notes is also illustrative of the Government's fundamental lack of understanding that the reason a Christian organisation requires Christian employees is not because of their need for technical knowledge about Christianity to "explain" doctrine or to "represent" the views of Christianity but because being motivated to do a job by a love for Jesus, in the power of the Holy Spirit and in a manner that accords with the Bible's teaching, is something that only Christian employees can do (see Acts 6:1-6).

## **Action**

The Equality Bill has already passed through all stages in the House of Commons with just 5 hours allowed to debate over 200 sections and 28 Schedules of complex and controversial provisions. Key amendments to the clauses discussed above are most likely to be considered in the House of Lords on **25<sup>th</sup> January 2010** with further votes in the Lords and Commons shortly after this.

### **We would urge all Christians and churches to consider taking the following action:**

- Please pray for a miracle that the House of Lords would pass the Godly aspects of the Bill and reject the ungodly aspects;
- Please forward this information pack to every church and Christian you know, so that no-one is ignorant about the implications of the Equality Bill; and
- Please write to a member of the House of Lords (see below for how to do this) and your MP to **ask them to support Baroness O'Cathain's proposed amendments 98, 99 and 100.**

98 and 99 delete the requirement for a proportionality test (see above) and 100 deletes the definition of organised religion (see above). In total the amendments therefore return the position to the phrasing of the current law: they restore the *status quo*.

### **Template letter for churches**

*Please write your own letter and say whatever you feel appropriate (it is good to make the letter personal to your own circumstances). The following are points you may wish to include.*

- As Christians we support equality (give examples both from the Bible and from you / your church's daily practice) and support many elements of the Equality Bill.
- However, equality does not extend to all the choices we make about how to live our lives, and that includes the choices we make about religion or belief and sexual practices.
- The Bible teaches Christians to love everyone, whatever their religion or belief or sexual behaviour, but also teaches us not to follow or be part of any false religion or sexual immorality. The problem with the Equality Bill is that it takes away churches' freedom to act with integrity according to that teaching.
- The Equality Bill will not even allow many churches to ensure that key members of their staff are living a lifestyle in accordance with the Bible's teaching on sexual morality. It only allows a church to do this in relation to ministers and jobs which exist to "promote or represent the religion or to explain the doctrines of the religion" (see Government amendment 99A).

- According to this definition, even though such conduct is fundamentally contrary to the Bible’s teaching, a church will probably not be able to refuse to employ an openly practising homosexual applicant for a trainee minister who spends three days a week studying, a prayer coordinator, a pastoral worker, the head of a church-run debt counselling service or relationship counselling service.
- Why should the Government force churches to become places of hypocrisy where the Bible is taught but where those teaching it and those working within it cannot be required to live it?
- Freedom of religion should mean that the law enables Christians to attend a place of worship where they know that the staff share their beliefs and are committed to living by them.
- The Explanatory Note accompanying the Bill originally stated that the exception allowing a church not to employ a practising homosexual “would not apply to a requirement that a church youth worker or accountant be heterosexual” and now reads that the exception “is unlikely to permit a requirement that a church youth worker who primarily organises sporting activities is celibate if they are gay, but may apply if the youth worker mainly teaches Bible classes”. \_Whichever is the case, many church youth workers do spend more time arranging social activities than teaching doctrine, but this does not mean a church should have to employ someone whose lifestyle is fundamentally contrary to the teaching of the Bible. How can a practising homosexual youth worker, however small the proportion of time they spend on teaching Bible classes, teach that the young people in the church should not engage in sexual immorality when they are openly and unrepentantly contradicting this teaching in their own lives?
- The Equality Bill apparently gives freedom to churches to employ Christians and not atheists or those who believe in other religions, but what use is this if a church cannot define a Christian as someone who is committed to the Bible and its teaching on all things, including sexual morality? It is an empty freedom. How would a member of the Labour party feel if you told them that they could choose to employ only Labour supporters (and refuse applications from BNP members) within a Labour constituency office but that they could not define Labour to exclude people who publicly support racist policies?
- The Bill introduces a new requirement that a church can only exclude a transsexual, Civil Partner, practising homosexual or person of a given sex, from a particular post where that exclusion is in order to comply with doctrine or in order to comply with the strongly held views of a significant number of Christians and it is proportionate to do so. The right to religious freedom should mean that it is enough to show the church is acting in accordance with doctrine. The view of a secular or atheist judge as to what is proportionate might well vary from the view of the church’s members or the vicar – why should such a judge decide how a church is allowed to follow the Bible within its four walls?
- **I would urge you to support amendments 98, 99 and 100 to the Bill which will return the exceptions contained in Schedule 9 of the Equality Bill to the current position under the Employment Equality (Sexual Orientation) and (religion or belief) Regulations 2003.**

## **Template letter for Christian organisations**

*Any of the above points can be made where relevant, as well as any of the following*

- In the Explanatory Notes to the Bill the Government gave an example of how the Bill would operate that suggests it is intending to introduce greater restrictions on the freedom of faith organisations to employ people of that faith: “A religious organisation may wish to restrict applicants for the post of head of its organisation to those people that adhere to that faith. This is because to represent the views of that organisation accurately it is felt that the person in charge of that organisation must have an in-depth understanding of the religion’s doctrines. This type of discrimination could be lawful. However, other posts that do not require this kind of in-depth understanding, such as administrative posts, should be open to all people regardless of their religion or belief.”

- At the moment there is no requirement that an “in-depth” understanding of the religion’s doctrines must be necessary. The example implies that it is only very senior positions in a Christian organisation or other faith organisation that permits the appointment of someone of the organisation’s faith. For Christians this misses the point entirely – what good is it to have a Christian head of an organisation if those working on the ground, the hands and feet of Jesus Christ, do not believe in Jesus? Surely then it is no longer a Christian organisation? There is a need for the Explanatory notes to be changed to delete this explanation.
- The example is illustrative of the Government’s fundamental lack of understanding that the reason a Christian organisation requires Christian employees is not because of their need for technical knowledge about Christianity to “explain” doctrine or to “represent” the views of Christianity but because being motivated to do a job by a love for Jesus, in the power of the Holy Spirit and in a manner that accords with the Bible’s teaching, is something that only Christian employees can do.
- The Government’s attitude is seen from the example’s statement that “A religious organisation may wish to restrict applicants for the post of head of its organisation to those people that adhere to that faith”. One wonders how it could be called a religious organisation if its head does not share that religion nor is it allowed to ensure that its less senior employees share that religion? How would a constituency Labour Party feel if you told them that they “may” wish to have a Labour rather than a Conservative head? How would they feel if you told them it was unlawful to refuse to employ active BNP members in the office? The approach in the Equality Bill shows no respect for faith organisations.
- **I would urge you to support amendments 98, 99 and 100 to the Bill which will return the exceptions contained in Schedule 9 of the Equality Bill to the current position under the Employment Equality (Sexual Orientation) and (religion or belief) Regulations 2003.**
- **I would urge you to support amendments which provide freedom of religion, freedom of association and the ability for faith organisations to be staffed by people of that faith. I would urge you to support a change to the Explanatory Note to Schedule 9 paragraph 3 that acknowledges these points.**

## **How to contact members of the House of Lords (peers) and MPs**

Those who have friends or acquaintances in the House of Lords should arrange to meet with or write to them to explain the issues outlined above. Although members of the House of Lords do not have constituencies as such, they are still based, through where they live, in certain localities. If you do not have a personal link with a peer, it therefore makes sense to find out who your ‘local’ peer is and then to contact them by writing or by e-mailing. Having the link of living close by will be a good starting point for the correspondence. Alternatively you can look for a peer whose surname starts with the same letter of the alphabet as yours.

**Please contact at least one peer, as well as your nearest Anglican bishop (the bishops all have a place in the House of Lords and can speak and vote on this measure).**

Information about your local peers can be found on the internet, on websites such as the Parliament website, as well as through searches on Google, etc. You can call the House of Lords directly and ask them for information on 0207 219 3000. An alphabetical list of Peers can be found at the following link:

[http://www.parliament.uk/mpslordsandoffices/mps\\_and\\_lords/alphabetical\\_list\\_of\\_members.cfm](http://www.parliament.uk/mpslordsandoffices/mps_and_lords/alphabetical_list_of_members.cfm)

Once you know the name of the relevant peer, further contact details can be found on the Parliament website. This will enable you to write to them directly, or alternatively any letters can be sent to peers at Westminster by posting them to this address: *House of Lords, London, SW1A 0PW*

**MPs:** Full details on how to find and contact your local MP can be found on the Parliament website.

# Appendix: Extracts from the current law and the Equality Bill

The current law on religion or belief is contained in the **Employment Equality (Religion or Belief) Regulations 2003**:

*7 Exception for genuine occupational requirement  
[...]*

- (3) This paragraph applies where an employer has an ethos based on religion or belief and, having regard to that ethos and to the nature of the employment or the context in which it is carried out—*
- (a) being of a particular religion or belief is a genuine occupational requirement for the job;*
  - (b) it is proportionate to apply that requirement in the particular case; and*
  - (c) either— (i) the person to whom that requirement is applied does not meet it, or  
(ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it.*

The **Equality Bill** proposal for religion on belief is contained in Schedule 9, Part 1:

*OCCUPATIONAL REQUIREMENTS - Other requirements relating to religion or belief*

- 3 A person (A) with an ethos based on religion or belief does not contravene a provision mentioned in paragraph 1(2) by applying in relation to work a requirement to be of a particular religion or belief if A shows that, having regard to that ethos and to the nature or context of the work—*
- (a) it is an occupational requirement,*
  - (b) the application of the requirement is a proportionate means of achieving a legitimate aim, and*
  - (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).*

The current law on sexual orientation is contained in the **Employment Equality (Sexual Orientation) Regulations 2003**: The first part of the test (subsection (2)) applies to all Christian organisations and the second part (subsection (3)) applies only to organised religion (i.e. Churches):

*7 Exception for genuine occupational requirement etc  
[...]*

- (2) This paragraph applies where, having regard to the nature of the employment or the context in which it is carried out—*
- (a) being of a particular sexual orientation is a genuine and determining occupational requirement;*
  - (b) it is proportionate to apply that requirement in the particular case; and*
  - (c) either— (i) the person to whom that requirement is applied does not meet it, or  
(ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it, and this paragraph applies whether or not the employment is for purposes of an organised religion.*
- (3) This paragraph applies where—*
- (a) the employment is for purposes of an organised religion;*
  - (b) the employer applies a requirement related to sexual orientation—  
(i) so as to comply with the doctrines of the religion, or  
(ii) because of the nature of the employment and the context in which it is carried out, so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers; and*
  - (c) either— (i) the person to whom that requirement is applied does not meet it, or*

(ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it.

The **Equality Bill** proposal for sexual orientation is contained in Schedule 9, Part 1. The first part of the test (paragraph 1) applies to all Christian organisations and the second part (paragraph 2) applies only to organised religion (i.e. Churches):

#### *General*

1(1) A person (A) does not contravene a provision mentioned in sub-paragraph (2) by applying in relation to work a requirement to have a particular protected characteristic, if A shows that, having regard to the nature or context of the work -

- (a) it is an occupational requirement,
- (b) the application of the requirement is a proportionate means of achieving a legitimate aim, and
- (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).

#### *Religious requirements relating to sex, marriage etc., sexual orientation*

2(1) A person (A) does not contravene a provision mentioned in sub-paragraph (2) by applying in relation to employment a requirement to which sub-paragraph (4) applies if A shows that—

- (a) the employment is for the purposes of an organised religion,
- (b) the application of the requirement engages the compliance or non-conflict principle, and
- (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).

[...]

(4) This sub-paragraph applies to—

- (a) a requirement to be of a particular sex;
- (b) a requirement not to be a transsexual person;
- (c) a requirement not to be married or a civil partner;
- (d) a requirement not to be married to, or the civil partner of, a person who has a living former spouse or civil partner;
- (e) a requirement relating to circumstances in which a marriage or civil partnership came to an end;
- (f) a requirement related to sexual orientation.

(5) The application of a requirement engages the compliance principle if the application is a proportionate means of complying with the doctrines of the religion.

(6) The application of a requirement engages the non-conflict principle if, because of the nature or context of the employment, the application is a proportionate means of avoiding conflict with the strongly held religious convictions of a significant number of the religion's followers.

[...]

(8) Employment is for the purposes of an organised religion only if the employment wholly or mainly involves—

- (a) leading or assisting in the observation of liturgical or ritualistic practices of the religion, or
- (b) promoting or explaining the doctrine of the religion (whether to followers of the religion or to others)