

Equality Act

I attach for the information of Synod members a copy of a note on the Equality Act prepared by the Legal Office in connection with episcopal appointments for members of Crown Nominations Commissions and diocesan bishops and their Advisory Groups.

William Fittall
Secretary General

Church House
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CHOOSING BISHOPS – THE EQUALITY ACT 2010

1. The Equality Act ('the Act') has codified and, in some cases, extended previous law in relation to discrimination. Most of the provisions of the Act came into force on 1 October 2010.
2. This note is not intended as a comprehensive briefing on a long and complex piece of legislation. Instead, it seeks to summarise some key points which those involved in the process of nominating bishops need to keep in mind in their deliberations and when considering or interviewing candidates. It also provides more specific guidance on two particular areas.

General principles

3. The Act identifies nine 'protected characteristics'. These are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. It then goes on to define 'direct discrimination' -which arises where, because of a protected characteristic, one person is treated more or less favourably than another- and 'indirect discrimination' -which arises where a person applies a generally applicable provision, criterion or practice which puts another person with a protected characteristic at a disadvantage and which cannot be objectively justified.
4. The effect of the Act is to make it unlawful to engage in direct or indirect discrimination in certain contexts (including employment, certain sorts of office holding, the provision of services and access to premises) unless the law provides for a specific exemption.
5. The definitions and exemptions in the Act, which runs to 239 pages, are complex. There are, for example, various circumstances in which a 'genuine occupational requirement' can be applied in the employment field even though it involves direct or indirect discrimination in relation to one or other of the protected characteristics.
6. Unless one of the exemptions applies, however, those responsible for selection processes will lay themselves open to legal challenge if, in any part of the process, they appear to allow a protected characteristic to be taken into account in considering a candidate's eligibility for appointment.
7. Thus, for example, although direct discrimination because of the protected characteristic of age is unlawful, the effect of exemptions in the Act is to permit the Church of England to continue to require that a person may not become a bishop until he has reached the age of 30 and also that he leave office on reaching the age of 70.
8. But any suggestion during a selection process that consideration had been given to whether an eligible candidate was thought to be 'too young' or 'too old' would be unlawful. Similarly, giving preference to a candidate because he was married or because he was not married would be unlawful.
9. It is also, in general, unlawful to discriminate on grounds of religion and belief. But, again, there is specific provision for Churches and other religious organisations to impose relevant requirements when making appointments.
10. It is, therefore, lawful for the Church of England not merely to give effect to the general legal requirements relating to the qualifications of those to be consecrated as bishops but also to take into account the particular convictions and Church tradition of candidates where that is relevant to the post for which they are being considered and the context in which they would be exercising their ministry if appointed.

The role of the bishop

11. When selecting those who are to serve it as bishops, priests or deacons, the Church of England, like many other Churches and faiths, does not draw the same distinction as most secular employers between a person's work life and his or her private life. Thus, to be admitted to Holy Orders a person must be 'of virtuous conversation and good repute and such as to be a wholesome example and pattern to the flock of Christ' (Canon C4.1).
12. Additionally, a bishop is required to be a focus of unity. One element of this is lifestyle. Under the Canons he has a responsibility to be '*an example of righteous and godly living*'. At their consecration bishops are asked: '*will you endeavour to fashion your own life and that of your household according to the way of Christ ...?*' Bishops are seen within the Anglican Communion as those who have the responsibility '*to guard the faith, unity and discipline of the whole Church*' (the Virginia Report 1998).
13. Against that background there are two particular issues – divorce and remarriage, and homosexuality and civil partnership – which may arise in the course of selection exercises for episcopal office and where questions may arise as to what requirements may lawfully be imposed given the provisions of the Act.

Divorce and remarriage

14. In most employment contexts it is unlawful for employers to discriminate against people in relation to their marital status or history. The Act does, however, allow Churches and other religious organisations to apply a requirement relating to the circumstances in which a marriage came to an end or a requirement not to be married to someone with a living former spouse.
15. The House of Bishops issued a statement on 18 June 2010 (GS Misc 960) clarifying the implications of marriage after divorce for eligibility for ordained ministry, including the episcopate. The statement noted that there was no legal prohibition on the consecration to the episcopate or appointment to episcopal office of someone who had married again and whose current and former spouse was still alive or who was married to someone whose spouse from a former marriage was still alive.
16. The statement went on to say that in such circumstances before someone could be considered for an episcopal appointment the archbishop of the province in which the clergyman was serving would want to satisfy himself, on the basis of enquiries carried out by the relevant diocesan bishop, that the marital history did not, in the light of all the circumstances, constitute an obstacle to episcopal appointment. These enquiries will be made before a candidate comes to be considered for a diocesan or suffragan bishop appointment.
17. The statement continued: '*the fact that someone in this situation has been added to the preferment list does not mean that the CNC or the diocesan bishop and those advising him in relation to a suffragan appointment are precluded thereafter from taking the marital history into account when considering his suitability for a particular office. As noted above in relation to parochial appointments, those with the relevant responsibility are entitled to reach a judgement on whether marital history might prove an obstacle given the strongly held religious convictions of a significant number of those to whom the person would be ministering*'.
18. The statement added: '*bishops are required to be a focus for unity and a diocesan bishop is the chief pastor of all that are within his diocese. Those selected for*

diocesan or suffragan roles are expected to be an example to the people of God. Marital history is one of many considerations which may properly be taken into account in discerning who God is calling to such office in His Church’.

Homosexuality and Civil Partnership

19. A person’s sexual orientation is, in itself, irrelevant to their suitability for episcopal office or indeed ordained ministry more generally. It would, therefore, be wrong if, during a CNC or a selection process for a suffragan see, account were taken of the fact that a candidate had identified himself as of gay sexual orientation.
20. As a matter of law, however, the Act allows Churches and religious organisations to impose a requirement that someone should not be in a civil partnership or impose a requirement related to sexual orientation where *‘because of the nature or context of the [office], the requirement is applied so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion’s followers’.*
21. The Church of England’s teaching in relation to same-sex relations and, more recently, civil partnerships can be found in the General Synod motion of 1987, the House of Bishops’ teaching statement of 1991, *Issues in Human Sexuality*, Resolution I.10 of the Lambeth Conference 1998, and the House of Bishops’ Pastoral Statement of 2005 on Civil Partnerships. These make it clear that someone in a sexually active relationship outside marriage is not eligible for the episcopate or other ordained ministry.
22. There is, by contrast, no corresponding statement of the position of the Church of England that declares that a celibate person in a civil partnership cannot be considered for appointment as a bishop.
23. In particular, the House of Bishops’ statement of 2005 did not address this question. It noted that the House saw *‘nothing incompatible between Holy Orders and entering into a civil partnership, where the person concerned is willing to give assurances to his or her bishop that the relationship is consistent with the standards for the clergy set out in Issues in Human Sexuality.’* The reference to assurances to the bishop implies, however, that when making that statement the House was addressing the position of deacons and priests alone.
24. The statement went on to say *‘it would be inconsistent with the teaching of the Church for the public character of the commitment entered into in a civil partnership to be regarded as of no consequence in relation to someone in – or seeking to enter – the ordained ministry’.*
25. As in the case of divorce and remarriage, the question would remain whether the present or past personal relationships of a candidate would constitute an obstacle to episcopal appointment on the ground that someone in their position could not fulfil the responsibility and requirement of a bishop to act as a focus of unity.
26. It is clearly the case that a significant number of Anglicans, on grounds of strongly held religious conviction believe that a Christian leader should not enter into a civil partnership, even if celibate, because it involves forming an exclusive, lifelong bond with someone of the same sex, creates family ties and is generally viewed in wider society as akin to same-sex marriage. It is equally clear that many other Anglicans believe that it is appropriate that clergy who are gay by orientation enter into civil partnerships, even though the discipline of the church requires them to remain sexually abstinent.

27. The position in summary, therefore, is as follows:

- it is not open to a CNC or a bishop making a suffragan appointment to propose someone who is in a sexually active same-sex relationship;
- it is not open to them to take into account the mere fact that someone is gay by sexual orientation;
- where someone is in a civil partnership and/or is known to have been in a same-sex relationship, even though now celibate, it is for the CNC in the case of diocesan appointments and for the diocesan bishop, in consultation with the relevant archbishop, in relation to suffragan appointments, to come to a view whether the person concerned can act as a focus for unity because of these matters.

28. As a matter of law, what this involves is applying a requirement related to sexual orientation so as to avoid conflicting with the strongly held religious convictions of a significant number of members of the Church of England, either in the particular diocese or more widely. The requirement is that the person can act as a focus for unity, which is related to the sexual orientation of the candidate.

29. Relevant factors which can properly be taken into account include:

- whether the candidate had always complied with the Church's teachings on same-sex sexual activity;
- whether he was in a civil partnership;
- whether he was in a continuing civil partnership with a person with whom he had had an earlier same-sex sexual relationship;
- whether he had expressed repentance for any previous same-sex sexual activity; and
- whether (and to what extent) the appointment of the candidate would cause division and disunity within the diocese in question, the Church of England and the wider Anglican Communion.

30. It is a matter for each member of the CNC (or in the case of suffragan appointments, the diocesan bishop) to determine what weight to give to these matters..

The Legal Office.
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