

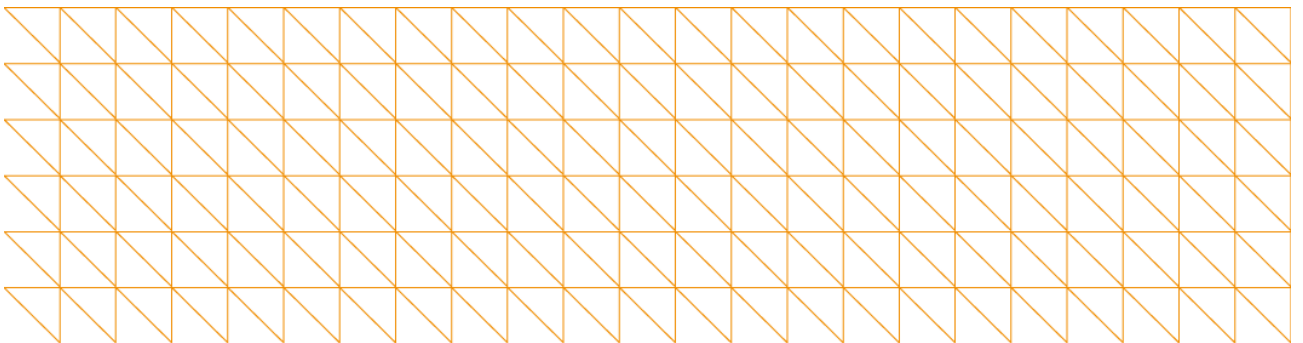


Ministry
of Justice

Marriage (Same Sex Couples) Act 2013

Shared Buildings Regulations

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of Justice

Marriage (Same Sex Couples) Act 2013

Shared Buildings Regulations

Response to consultation carried out by the Ministry of Justice.

This information is also available on the Ministry of Justice website: www.justice.gov.uk

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Introduction and contact details

This document is the post-consultation report for the consultation paper, 'Marriage (Same Sex Couples) Act 2013 Shared Buildings Regulations.'

It will cover:

- the background to the report;
- a summary of the responses to the report;
- a detailed response to the specific questions raised in the report; and
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting Maya Sooben at the address below:

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This report is also available on the Ministry's website: www.justice.gov.uk.

Alternative format versions of this publication can be requested from the above address.

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Background

The Marriage (Same Sex Couples) Act 2013 ('the 2013 Act') makes the marriage of same sex couples lawful in England and Wales. The 2013 Act will enable same sex couples to marry in civil ceremonies and, provided a religious organisation has 'opted in' and the minister of religion agrees, to marry in religious ceremonies. The 2013 Act also protects those religious organisations and their representatives who do not want to conduct marriages of same sex couples from being successfully challenged in court.

The consultation paper '*Marriage (Same Sex Couples) Act 2013 Shared Buildings Regulations*' is part of the implementation of the 2013 Act and was published on 3 October 2013. It invited comments on the government's proposed approach to, and draft regulations for, the process for using religious buildings shared by more than one religious organisation for marriages of same sex couples.

Many religious organisations currently share premises. Some sharing arrangements are the subject of formal sharing agreements governed by the Sharing of Church Buildings Act 1969 ('the 1969 Act'). In respect of shared buildings subject to such formal arrangements, the 2013 Act inserts into the Marriage Act 1949 ('the 1949 Act') new basic procedures for the registration, and cancellation of the registration, of religious buildings that are shared by more than one religious organisation for solemnizing marriages of same sex couples.¹

Not all sharing arrangements are governed by a formal sharing arrangement – some religions are not covered by the legislation or there may be an ad hoc agreement to use a building from time to time. Whilst the 2013 Act does not make provision for the registration of shared buildings that are not subject to formal sharing arrangements, it does provide the power to make regulations that make provision for the registration of these buildings² and a draft of these regulations was consulted on. They set out the government's proposals for the procedure for the registration of shared buildings that are not subject to formal arrangements.

The draft regulations also made some proposals for additional provisions that are not covered by the 2013 Act for shared buildings that are the subject of formal arrangements.

As part of the consultation the government sought views on the draft regulations and in particular, on some specific questions set out in the consultation paper including:

- what should count as a 'qualifying sharing church' in the case of informal sharing arrangements ('qualifying sharing church' is a new concept that is not contained in the 2013 Act);

¹ See the powers conferred by sections 44A(10), 44B (7), 44C(1), 44C(2), and 44D(2) to 44D(7) of the 1949 Act as inserted by Schedule 1 to the 2013 Act.

² See the powers conferred by section 44C and 44D of the 1949 Act as inserted by Schedule 1 to the 2013 Act.

- the procedure for how an informally shared building should be registered and how its registration should be cancelled under the 2013 Act;
- what should happen when the identity of any one of the sharing religious organisations changes;
- what should happen when a further religious organisation begins to share a building that may or may not have already been registered for marriages of same sex couples; and
- what should happen when a building ceases to be shared.

The consultation closed on 1 November 2013 and this report summarises the responses, including how the consultation process influenced the final policy and the regulations to be presented to Parliament.

Summary of responses

A total of 99 responses to the consultation paper were received. Respondents consisted of:

- Members of the Public - 54
- Religious Groups - 24
- Stakeholders - 3
- Individuals with experience on 'sharing religious' buildings - 16
- Not specified - 2

The responses were analysed for their approach to the policy and for their comments on the practical effects of the draft regulations in the light of their experience of sharing buildings with other religious groups.

Many respondents indicated opposition to the underlying principles of the 2013 Act. As a result a large number of respondents rejected any policy which sought to make regulations allowing places of worship to be registered to solemnize the marriage of a same sex couple. This meant that there were a large number of responses that did not focus on the detail of individual consultation questions or on the content of the regulations. The government's response needs, therefore, to be viewed in this context.

Those that did focus on the questions and the content of the regulations were supportive of the principle to, as far as possible, align procedures that apply to informally shared buildings with those buildings subject to formal agreements under the 1969 Act.

The majority of respondents felt that the governing authorities of all the relevant religious groups should have to give their consent to the registration of the building to solemnize marriages of same sex couples. A small number of respondents took an alternative view arguing that only the proprietor or trustee of a shared building should be able to register that building.

There was opposition to the concept of, and criteria for, a 'qualifying sharing church' with many respondents arguing that all religious groups that share a building should have to give consent to the registration of that building. Generally, these respondents felt that the proposed approach undermined the religious protections contained in the Act. In part these responses tended to reflect a more general opposition to the principle of enabling the marriage of couples of the same sex. A smaller number of responses were in favour of the approach arguing that it struck an appropriate balance between protecting religious freedoms and allowing those religious organisations that wished to solemnize the marriage of a same sex couple to do so.

The majority of respondents agreed that it would be wrong for a sharing church to be able to make a cancellation application, and have it granted, without the proprietor or trustee being aware of this. There was less consensus regarding whether a three month time period, allowing the proprietor or trustee to respond to any cancellation application, was appropriate. Most respondents agreed that there needed to be a minimum period of notice for a cancellation in order to safeguard the rights of couples.

In respect of informally shared buildings and the specific question on the cancellation process, there was general support for the proposal that any relevant governing authority among the sharing groups should be able to apply to cancel the registration of the building to solemnize marriages of same sex couples. Although there was some opposition to the special arrangements regarding the governing authority for the Jewish religion and the Society of Friends (Quakers), we believe that this was the result of respondents' misunderstanding the context and the position of those organisations in existing marriage law. Many responses asked why we were making special provision for these religious organisations and not for other religions. We have clarified the need for this aspect of the regulations in the summary of responses to that question.

Opinion was more divided as to whether the regulations should make clear which sharing religious groups are able to solemnize marriages in a shared building. Some respondents were concerned that this made the registration process more onerous while others agreed that this safeguard was needed to prevent some religious organisations using the building's registration to solemnize a marriage even where their governing authority had not provides its consent. A religious group raised the potential inconsistency between regulations 8 (2) and 8 (4). Regulations 8 (2) provides that a sharing church may only solemnize a marriage of a same sex couple at a church if a copy of the consent from their governing authority accompanied the application. Regulation 8(4) describes the process for application, which requires the application to be accompanied by written consent from the governing authority of the group applying to register. There does appear to be an omission and Regulation 8 (4) will be amended to include a reference to the fact that written consent from other groups wishing to solemnize marriages of same sex couples should also accompany the application.

There was some opposition to the proposal for a qualifying period before a sharing group can make an application to cancel the registration. Some respondents felt that it had the potential to undermine the religious freedom of religious groups which did not wish to solemnize marriages of same sex couples. Other respondents felt that those organisations entering into a new sharing arrangement where the building was already registered to solemnise the marriage of a same sex couple should have no right to cancel the existing registration. A smaller number of respondents welcomed the approach which they believed would provide an appropriate safeguard against an organisation joining a sharing arrangement and immediately making an application to cancel that buildings registration.

The consultation responses were generally in favour of the approach to be taken when a building ceases to be a shared building and where the identity of the sharing churches changes.

The responses to the individual consultation questions are summarised below alongside the government's response. The conclusion and next steps are set out on page 23.

Responses to specific questions

Question 1

A) Do you agree that the basic procedures for registering buildings subject to the 1969 Act should apply to informally shared buildings?

89 respondents answered this question. 24 respondents were in favour of applying the provisions of the 1969 Act to informally shared buildings and 65 opposed this. Almost all of the responses that disagreed with the proposal did so on the basis that they opposed the extension of marriage to same sex couples in principle. Consequently they did not agree that informally shared buildings should be registered at all.

Many of these responses were concerned that religious groups might be forced to solemnize or accept marriages of same sex couples, and that the proposals threatened religious freedom.

Of those respondents that addressed the question, the majority agreed that the 1969 Act should apply, either in its entirety or at least in so far as was practicable. One religious group thought the basic procedure for registering informally shared religious buildings should reflect the general procedure for registration and that the proprietor or trustee of the building should make the application for registration. Other respondents were concerned that the position with informally shared buildings might be unnecessarily restrictive on sharing groups who wished to solemnize marriages of same sex couples and could unfairly prevent them from doing so.

Another religious group argued that 'sharing religious groups' are effectively tenants and should not be able to veto registration. This group thought the owners of the building should be able to decide what should happen with the building. Several respondents expressed concern that the regulations were complex and would undermine informal arrangements between religious groups.

Government response

We note that the majority of responses that addressed this issue agreed that the basic procedures for registering buildings subject to the 1969 Act (formally shared buildings), should apply to informally shared buildings. The government agrees and this principle will be applied to the final regulations.

B) In particular do you consider that all of the relevant governing authorities should have to consent to the registration of the building or do you consider that just the consent of the proprietor or trustee of the building should be required?

87 respondents answered this question, with 50 respondents believing that all the relevant governing bodies should have to consent and 16 that only the proprietor or trustee of the building should decide.

Many respondents qualified their responses by saying that they disagreed with the marriage of same sex couples in principle, however, in the event that religious buildings are able to register then all relevant governing bodies/authorities should have to consent to the registration of the building. These respondents felt that there were significant risks in allowing only the proprietor or trustee to provide consent. There were significant concerns that this diverged significantly from the arrangements for formally shared buildings and could lead to the breakdown of long standing agreements if a sharing church disagreed with the marriage of same sex couples.

Many respondents argued that there were religious groups that fundamentally disagreed with the principle of marriage for same sex couples who would either be forced into sharing a registered building or would have to leave a sharing arrangement. It was generally argued that no religious group should be displaced as a result of these regulations.

Some respondents believed that all sharing groups should consent, as frequency of use is not necessarily proportionate to the strength of feeling about the issue. Others felt that all the relevant governing authorities of religious groups that share buildings, both formally and informally, should have the opportunity to block an application in the interests of protecting religious freedom and the right to freedom of conscience.

A smaller number of respondents felt that the decision should rest with the proprietor/trustee only and that the governing authority should not get involved in how the buildings operate and must not be allowed to impose their views. Others felt that the consent of the proprietor or trustee should be sufficient and in the past the majority's wish had been frustrated by a small minority. These responses were concerned that the regulations may lead to some religious organisations having an effective veto over the use of the building. In particular in those cases where the proprietor or trustee of the building wanted to register the building but one or more sharing organisations did not.

In this context a religious group argued that the requirement for all of the relevant governing authorities of the sharing churches to consent to the registration of the building, where the building is informally shared, is excessive and unfair on the trustees/proprietor of the building. The group thought that the trustee/proprietor should retain ultimate control where the building is only shared under informal arrangements. It was further argued that if sharing churches are required to give consent, it should only be those sharing churches with a significant interest in the building that are able to do this e.g. through the passing of time or a legal interest in the building.

Another religious group felt that an application by the trustee or proprietor of the building, accompanied by consent to marriages of same sex couples on the part of any one sharing church's governing authority, should suffice to enable registration of the building.

Some responses welcomed the draft regulations as an attempt to respect the autonomous decision making processes of religious group even where there is no formal sharing agreement in place. They also urged the government to allay the concerns of religious

groups which wish to conduct same sex marriages that they may be vulnerable to unreasonable interference in their decision making. This may be of particular concern in cases where they are proprietor or trustee of the relevant building.

Government response

On balance we have decided to proceed with a policy that all relevant governing authorities should have to consent to the registration of the building. We recognise that some respondents did feel that the consent of the proprietor or trustee was sufficient. However, we note the concerns raised by the majority of respondents that this could leave some religious groups that have been in long standing sharing arrangements and who make significant use of a shared building in a difficult position. We believe that this would represent a significant and unwarranted divergence from the process for formally shared buildings where all governing authorities must give consent.

Consequently the regulations will require that all the governing authorities of relevant religious groups will be required to consent to the registration of a shared building.

C) What are your views on the concept of a ‘qualifying sharing church’ for determining who is able to consent to registration of the building? In particular do you think this approach strikes the right balance between protecting the rights of religious organisations that use a shared building and enabling religious organisations who use shared buildings and who want to solemnize marriages of same sex couples to do so?

79 respondents answered this question. The concept of a ‘qualifying sharing church’ was not supported by the majority of respondents, with 62 responses being opposed to the proposal, as opposed to 14 in favour.

A number of religious groups were concerned that the concept of a ‘qualifying sharing church’ was ‘artificial’ and did not apply to those buildings shared under the 1969 Act.

Many respondents thought that the need to qualify as a sharing church in order to be able to give consent or not placed an unfair restriction on the religious freedom of sharing churches. The majority of respondents argued that all sharing bodies within a shared building should have to agree to registration of the building. There was concern that the concept of a ‘qualifying sharing church’ would not protect the religious freedom of religious groups which did not wish to solemnize marriages of same sex couples. Respondents argued that there may be cases where a religious group would have to leave a long standing sharing arrangement if its usage did not mean that it became a ‘qualifying sharing church’. It was argued that this was unfair. Some respondents thought every religious group should be able to block an application, which they argued was compatible with the protections provided to religious groups in the 2013 Act.

Others sought to argue that even if the concept of a ‘qualifying sharing church’ was introduced those churches that did not qualify must be consulted before registration is sought.

We also received a number of responses that disagreed with the concept of a 'qualifying sharing church' because they believed that all sharing groups should be free to register the building if they wished, and should not be penalised on the basis of the extent or quality of their usage.

A smaller minority of respondents agreed that the concept of a 'qualifying sharing church' was entirely reasonable. These responses underlined the need to balance the religious protections while enabling those religious groups that wished to solemnize the marriage of a same sex couple to do so. They felt the concept achieved this. In particular these responses agreed that it was fair that a group's use of a building should affect its entitlement to consent or otherwise. Respondents were clear that religious groups who made very little use of a shared building should not be able to block a registration agreed by other organisations who make more substantial use of the building – respondents used substantial to mean both the extent and the nature of use.

There were concerns that the concept would not be workable and would be divisive, but some respondents were unsure as to what religious freedom was actually being protected for those churches which did not wish to register.

Government response

The government acknowledges the concerns raised by the majority of respondents to this question. However, having considered this matter further we remain of the view that the regulations for informal sharing arrangements should contain the concept of a 'qualifying sharing church'.

This is an issue where the government has sought to balance the need to maintain religious protections while enabling religious groups that wish to solemnize a marriage of same sex couples to do so. In this context we believe that it is right that the ability of an organisation to consent to a building being registered for marriages of same sex couples should depend on the nature and extent of the use that that group makes of the shared building.

We continue to believe that it would be unfair for one group that makes only occasional and minimal use of the building for purposes other than public religious worship to be able to block an application for registration that all the other sharing groups who use the building on a much more extensive basis may wish to make (or be prepared to consent to).

As a consequence the final regulations will introduce the concept of a 'qualifying sharing church'.

D) What are your views on the criteria for determining whether a religious organisation is a 'qualifying sharing church'?

84 respondents answered this question, of which 52 did not agree with the criteria proposed and 16 agreed with them. 12 respondents did not comment specifically on the criteria, a number of which commented on the wider policy behind the 2013 Act.

As with other questions, a small number of respondents did not agree with marriage of same sex couples in principle and considered the proposals should not be taken forward.

Of those respondents that did not agree with the criteria, a significant number rehearsed the concerns raised in relation to the concept of a 'qualifying sharing church' reiterating that each group should be allowed to determine its own status and that all sharing religious groups must consent.

Other responses argued that churches with informal sharing arrangements would have difficulties proving that they meet the definition of 'qualifying sharing church' – criteria in the absence of a written contractual agreement.

Concerns were raised that the criteria for defining a qualifying sharing church are too loosely defined, particularly in respect of 'public worship'. Others believed that the minimum criteria could exclude some genuine applicants.

In particular it was argued that the proposed criteria to determine whether a sharing group is a 'qualifying sharing church', that the church must have used the shared building for public religious worship 'on two or more occasions' in each calendar month, should be amended to read 'on one or more occasions' in each calendar month.

In support of this view we were told that it was not uncommon in rural areas for one member of the clergy to be in charge of eight or more village congregations each with their own place of worship, which is often shared with a different denomination. The practicalities could mean that a shared church in a rural area may only be used once a month. However, it would still remain as the main religious building for that village. In that context it was argued that the regulations as drafted were too restrictive and may disadvantage members of a religious group in this situation. It was felt that for a religious group in this position not to have say in consenting to whether a building should be able to solemnize a marriage of same sex couples would be unjust.

In addition we were informed that the regulations failed to recognise that some small churches do not meet every month – particularly in August. The regulations may mean that a small religious group church could well find itself not considered as a qualifying sharing church simply because it has not met every month for the last six months. It was suggested that this type of situation needed to be taken into account.

A small number of respondents felt that decisions should be made informally and on a case by case basis, rather than by regulations which may put pressure on smaller sharing groups who make less use of a shared building. Others felt that the views of those who support, use and run the church are the key to whether or not the church should be registered as a 'qualifying sharing church'.

Other respondents considered that it would be more appropriate for there to be formal arrangements between the trustees/proprietor and sharing church before that church would be able to give consent. They argued that an informal relationship where there is no

license or lease and only worship twice a month for 30 minutes, should not entitle a sharing church to have a say over the use of the building.

A number of respondents agreed in principle to the criteria in the consultation but suggested additional criteria that should be considered for inclusion. In particular these responses emphasised a group's relationship with the building itself – for example, has a sharing organisation established a basis in the building and are they contributing to the fabric and upkeep of the building?

One particular religious group referred specifically to a perceived 'guest church veto'. They stated that if such a 'veto' was to be in place the proposed criteria were reasonable. They considered that the reference to public worship was important, since otherwise there will be doubt whether private societies which are permitted to use the building and insert some worship into their proceedings, qualify to exercise a veto.

Government response

The government accepts that there was opposition to the concept of a 'qualifying sharing church', primarily from the respondents who opposed the underlying policy of marriage of same sex couples or the use of shared religious buildings to solemnize marriages of same sex couples. The government believes that such a concept will be helpful in identifying which religious groups should have to be asked to agree to registration. In respect of the actual criteria to be a 'qualifying sharing church', the main concerns raised were in respect of the definition of public worship and the number of meetings held each month. It was felt that one meeting a month might be more equitable, as this was the experience and practice of a number of smaller religious groups sharing premises.

The government believes that it is necessary to strike a balance in all the provisions of the Regulations, and believes the definition of public worship should be expressed in the widest terms possible, so as to allow religious groups to qualify.

We have carefully considered whether the proposed criteria, requiring that in order to qualify as a sharing church, the church must have used the shared building for public religious worship 'on two or more occasions' in each calendar month, should be amended. We note that some respondents felt this may be too onerous in certain circumstances. On balance, in the context of the broader policy intention – that it would be unfair for a group that makes only minimal use of a shared building to block an application by another organisation - we have decided not to adjust the final regulations. In our view requiring at least two meetings a month is reasonable for religious groups to qualify to be required to agree to registration. Any reduction is likely to water down the concept of 'qualifying sharing church' to the extent that it is no longer meaningful in setting a threshold.

Question 2 - The government seeks your views on the above approach to formally shared buildings subject to the 1969 Act, in particular:

- **Do you agree that a form of protection along the lines suggested to prevent abuse of the cancellation application process is appropriate?**

- **The timescales set out above have been suggested to us by religious groups as properly reflecting how this process is likely to work in practice. What do you think of the timescales suggested above: three months advance notice to the proprietor/trustee of a cancellation application and three months for the proprietor/trustee to respond (if it objects)?**

79 respondents answered these questions. There was a broad split of opinion with most responses acknowledging that safeguards were required to prevent abuse of the cancellation process while proposing some amendments to the notice period required by the regulations. Overall, 31 respondents were broadly in favour of the government's proposals and 37 were against.

The majority of respondents agreed that it would be wrong for a sharing church to be able to make a cancellation application, and have it granted, without the proprietor or trustee being aware of this.

Many respondents agreed that safeguards were required to prevent a group or person making a cancellation application when they are not entitled to. However, several respondents did not think the three month notice period (allowing the proprietor or trustee to respond to any cancellation application) was appropriate. Most of these respondents argued that there should be no restriction or time limit inferring that the application should proceed immediately on receipt of the notification. Others thought there should be an opt-out approach rather than an opt-in approach to registration of buildings and several respondents said the existing legal provisions were adequate. It should also be noted that some respondents supported the position set out in the regulations. These agreed that the proposed notice period of three months for cancellation was entirely reasonable.

Most respondents acknowledged that safeguards had to be in place to protect the interests of couples and agreed that there needed to be a notice period before a building's registration could be cancelled.

Government response

We are grateful for the responses to this question. We note that most respondents agreed that there needed to be appropriate safeguards in place to protect against any abuse of the cancellation process.

The majority of respondents considered that the proprietor or trustee of the building should be made aware of a cancellation notice. It was also agreed that there should be protections for couples so that marriages were not cancelled at short or no notice because an organisation had decided to cancel its registration.

We are aware that a number of respondents disagreed with the introduction of a three month notice period which would allow the proprietor or trustee to check whether the authority bringing forward a cancellation application was entitled to do so. Many respondents were of the view that no such notice period was required and that the application should progress immediately. We have considered this point in the context of

the responses received. We note that respondents did not put forward any alternative mechanisms by which the proprietor or trustee could check the legitimacy of an application. We continue to believe that the ability to undertake these checks is an important safeguard and will help to prevent cancellation applications being used maliciously. We also believe it provides clarity to all relevant groups.

In the absence of an effective alternative, and bearing in mind that the time limits were suggested to us by religious groups as being appropriate we intend to retain the detail of this regulation.

Question 3 - The government seeks your views on the approach to the cancellation of the registration of informally shared buildings. In particular do you consider that any relevant governing authority should be able to apply to cancel the registration of an informally shared building, or should this just be a matter for the proprietor/trustee of the building?

Opinion was divided between those respondents who favoured the Proprietor or Trustee only being able to cancel the registration of an informally shared building and those who felt that a cancellation could come from the governing authority of a relevant religious group.

A small number of respondents felt that the decision should lie with the groups using the building and that any such group should be allowed to apply for registration or cancellation without needing permission from anyone else.

We received some suggestions that cancellation should only be permitted when all groups agree to it and that that proprietor/trustees should not interfere in the lawful activities of users of such buildings. Some respondents argued that anyone connected with the building should be able to apply to cancel the registration. Others felt that all those who use the building should be consulted and that the proprietor/trustee should have the final say.

A number of respondents noted that, in the context of the policy on 'qualifying shared churches', not all sharing parties will be considered as qualifying to be able to cancel the registration. These respondents tended to oppose the concept in principle and replicated the comments already set out in this response. Others raised concerns that should a dispute arise, churches with informal sharing arrangements will have difficulties proving that they meet the 'qualifying sharing church' criteria in the absence of a written contractual agreement.

One religious group did not believe that a guest church should be able to secure cancellation of a registration at all. But if this is to be possible, they welcomed the proposed definition of a qualifying sharing church for this purpose: in particular the requirement of two years' use before being able to apply to cancel the registration.

A number of respondents suggested that the criteria for cancellation of an informally share church should replicate those set out under the 1969 Act.

Government response

The government's approach to the cancellation process in relation to shared buildings outside the 1969 Act is to mirror the process for cancellations set out for those churches subject to the 1969 Act (i.e. the process set out in response to question two).

We have carefully considered the responses. However, we are not persuaded that there is a need to make any changes to the regulation on which we consulted in this regard. As we have outlined elsewhere in this response, we believe that all relevant governing authorities should have to give consent to the registration of the shared building to solemnize a marriage by a couple of the same sex. It is therefore logical that each member of a relevant governing authority should be able to withdraw its consent and be able to cancel a registration. In addition we will be proceeding with a concept of a 'qualifying sharing church' in the context of registration. Similarly, it is logical to apply this to the cancellation procedures.

The government has taken this approach because:

- this approach ensures consistency with the approach taken to buildings subject to the 1969 Act; and
- it will ensure that every religious organisation who uses the shared building as a place of worship (subject to what is said elsewhere about qualifying sharing churches) will be entitled to make an application as to the cancellation of the registration of that building.

Question 4 -The government seeks your views on the above approach. [This question related to specific provisions for the governing giving authority to give written consent to the marriage of same sex couples for the Jewish religion and the Society of Friends (Quakers)]

This question concerned specific provisions for the governing giving authority to give written consent to the marriage of same sex couples for the Jewish religion and the Society of Friends (Quakers). 61 respondents answered this question.

Many respondents asked why we were making special provision for the Jewish religion and the Society of Friends and not for other religions. Other respondents felt unable to give a view because they felt that it was a matter for the religions concerned but they took the opportunity to oppose marriage of same sex couples in principle. Others felt that it was fine as long as there was clarity and agreement regarding who the governing authority was.

Government response

Many of those who responded to this question queried why special provisions were being made for the Jewish religion and the Society of Friends (Quakers).

The Jewish religion and the Society of Friends already have special provisions and do not have to register buildings to solemnize marriages. These provisions have been in place

since 1753 and the government believes that it would be wrong to take them away. A flexible definition of governing authority has been provided in the 2013 Act for all other religious groups, but because of the absence of buildings for the Jewish religion and the Society of Friends the 2013 Act had to make provision for their governing authorities.

The definition of the governing authority in respect of the Society of Friends had already been agreed in advance of the consultation. In respect of the Jewish religion we have, as part of this process, agreed with the Board of Deputies that the regulations should adopt the definition of the relevant governing authority as set out in Section 26B of the 1949 Act.

We note that there were few other substantive comments on this question. In light of the clarification set out above we will proceed with the specialised provisions as set out in the regulations.

Question 5

A) Do you agree that provisions are required in the regulations to make clear which sharing churches are able to solemnize same sex marriages in a shared building?

72 respondents answered this question. Opinions were equally divided, with 32 respondents agreeing with the proposed provisions and 32 opposing them.

This question elicited a large number of responses which addressed the principles underpinning the 2013 Act. Many respondents used this question to highlight their opposition to the marriage of same sex couples and expressed strong views that no religious group should be compelled to solemnize marriages of same sex couples. Others thought that no shared religious building should be registered to solemnize marriages of same sex couples.

There was concern from some respondents that some religious groups that wished to solemnize marriages of same sex couples would be prevented from doing so and that the registration requirements should not be a means of preventing this. However, there were other respondents who agreed with the government's position and argued that it was right that the provisions differentiated between those groups that have consented to the use of the building and those that are actually able to solemnize the marriage of a same sex couple. These respondents agreed that a safeguard was needed to prevent members of a religious group sharing a building whose governing authority had not consented to solemnizing a marriage of a same sex couple using the building's registration to do so.

One respondent indicated an inconsistency between Regulation 8.2 and Regulation 8.4 in the regulations on which we consulted. Regulations 8 (2) provides that a sharing church may only solemnize a marriage of a same sex couple at a church if a copy of the consent from their governing authority accompanied the application. Regulation 8(4) describes the process for application, which requires the application to be accompanied by written consent from the governing authority of the group applying to register.

B) Do you agree with the processes that sharing churches will have to follow in this context?

72 respondents answered this question. Opinions were divided, and of those who expressed a view, 30 were in favour of the government's approach and 38 against. Some respondents considered that only the owner of the building should decide how it is used. Many expressed the view that no churches should be registered to solemnize marriages of same sex couples.

Some respondents were concerned that religious groups might be forced to accept marriages of same sex couples, while others were concerned that the government's approach frustrated those groups which wished to solemnize marriages of same sex couples. A number of respondents accepted the need for the regulations and were in favour of the government's approach and agreed with the processes proposed.

Government response to question 5 (A and B)

The government remains of the view that consent to the registration of a shared building (e.g. agreeing that another organisation can use the building to solemnize same sex marriages) should not be capable of enabling any sharing church in that building to solemnize marriages of same sex couples. This would undermine the religious protections set out in the 2013 Act as it may provide a route through which some members of a religious organisation could solemnize a marriage of a same sex couple without the consent of their governing authority. The government believes that it is right that it should be made clear which sharing churches are able to solemnize marriages of same sex couples. We believe we have provided this clarity in the regulations and will proceed with this policy.

The government believes that the processes required for individual sharing churches to register to solemnize marriages of same sex couples are appropriate and that they should be applied.

Question 6 - Do you agree that there ought to be a minimum period of use which the new sharing church should have made of the building before it should be entitled to apply to cancel an existing registration? Do you think that two years is the appropriate period for this?

Of the 74 respondents who answered this question, 38 were against the government's proposal and 15 in favour.

Many respondents disagreed with the introduction of a minimum period of use before an application to cancel the registration could be made. However, the reasons for disagreement were diametrically opposed.

Some respondents were concerned that such a concept undermined the freedom of religious groups which did not wish to solemnize marriages of same sex couples. In contrast others felt that allowing new sharers the power to apply to cancel the existing registration of a building could prevent religious groups which did wish to solemnize

marriages of same sex couples from doing so. These respondents suggested that those entering into a sharing agreement knowing that other group or groups in the sharing arrangement had already consented to the registration of the building should have no right to cancel the registration as a matter of principle.

Many respondents thought that there should be little or no restriction on applications to cancel the registration of buildings to solemnize marriages of same sex couples. Others thought that all sharing churches should have to agree before an application to cancel the registration could be made.

A small number of respondents commented that two years was too long a period before an application to cancel the registration can be made and suggested that six months or one year would be more appropriate.

Respondents in favour of the approach argued that it was fair and reasonable. These responses felt it would provide an appropriate safeguard against an organisation joining a sharing arrangement and immediately making an application to cancel that building's registration.

Government response

The government accepts that there was widespread debate on this issue. We note the lack of consensus and that, in some cases, responses were diametrically opposed.

Having considered both sides of the argument, we believe that there is an absolute need for this safeguard. We do not think that it is fair that a newly joining sharing church should be able undermine established arrangements by entering into a sharing arrangement with a church which is already able to solemnize marriages of same sex couples in the registered building and making an immediate application to cancel that building's registration.

The government wishes to prevent any unfortunate use of applications to cancel the registration and we continue to believe that there should be a minimum qualifying period to protect the interests of existing sharing groups who do wish to continue solemnizing marriages of same sex couples.

The consultation proposed that newly joining sharing churches should not be able to apply to cancel the registration until they have used the building for two years. On balance we are of the view that two years is a sufficient length of time and that the approach is fair and reasonable to all parties.

Question 7 - Do you agree with the proposed process for when a building ceases to become shared?

76 respondents answered this question. Of those answering the question directly, 39 were in favour of the government's approach and 24 against. Of those that did not agree most disagreed with the policy behind the 2013 Act and extending marriage to couples of the same sex.

In addition, a number of these respondents argued that if marriage of same sex couples is allowed no churches (or shared church buildings) should be able to solemnize marriages of same sex couples so the question was irrelevant.

A number of responses considered that, in circumstances where a building ceases to be shared, the remaining organisation should have to reapply for registration of the building. Conversely other respondents sought to argue that where the building ceases to be shared and no remaining sharing organisation has authority to solemnize marriages of same sex couples the building's registration should remain but be dormant. The dormant registration could be reactivated at a later stage subject to the registration process and the wishes of the sharing groups.

Government response

In the light of the consultation responses the government believes the approach set out in the consultation is the correct one. Where the building ceases to be shared the building shall remain registered for marriage of same sex couples provided that the remaining sharing church that continues to use the building was previously able to conduct marriages of same sex couples in the building. If the remaining church has not previously consented to solemnizing marriages of same sex couples, the registration should be cancelled.

Question 8 - Do you agree with the approach to the situation where the identity of sharing churches changes?

75 respondents answered this question. Of the respondents who expressed a view on this question, there were 33 in favour of the government's approach and 23 against.

Many respondents expressed a strong desire to protect the religious freedom of churches which did not wish to solemnize marriages of same sex couples. Some respondents thought all churches should be exempted from solemnizing marriages of same sex couples.

Some respondents considered that a joining church should be able to apply to cancel the registration to solemnize marriages of same sex couples without restriction. Others stated that if all the sharing churches did not wish to solemnize marriages of same sex couples there should be no restriction on applications for cancellation of the registration. A small number of respondents wished to have a fresh application made to register the building if the identity of sharing religious groups changed.

Government response

The government's suggested approach, which would see buildings continue to be registered to solemnize marriages of same sex couples subject to confirmation that the new sharing religious group gives consent, was supported in the consultation. The government believes its proposed approach is proportionate and is the correct policy for this situation.

Question 9 - Do you have any additional comments on the government's approach to these draft regulations?

74 respondents answered this question, many making general comments about the marriage of same sex couples. 34 respondents disagreed with the 2013 Act and opposed extending marriage to couples of same sex and for the marriages to be held in a church.

A number of respondents, in disagreeing with the 2013 Act believed that permitting shared buildings to be registered to solemnize marriages of same sex couples would pose a threat to religious freedom and could result in a sharing church being forced to conduct same marriages of same sex couples against its will. These respondents argued that the government must ensure that churches that do not accept the marriage of same sex couples are protected and are not forced to leave long standing sharing arrangements on the basis of their views. This echoes a more general sentiment that this policy potentially risked making some religious groups homeless as a result of the 2013 Act.

Other respondents made more specific suggestions. For example, some thought Regulation 13 should go further to provide that if a couple knowingly and wilfully inter-marry in the absence of the required consent as it relates to shared buildings then they, and the presiding minister and registrar shall have committed an offence under the Marriage Act 1949. The offence and penalties to be defined, and should probably be equal to those relating to 'sham marriages'.

Others suggested that any notice relating to registration of a building for same sex marriage or cancellation should be sent to both the trustee/proprietor as well as the relevant governing authority of the religious group the trustee or proprietor represented.

A small number of respondents considered that the registration of the building as a place of worship and applying for consent to solemnize marriages are separate issues and they should not be dependent on each other.

Some respondents felt that churches with informal sharing arrangements would have difficulties proving that they meet the qualifying sharing church criteria in the absence of a written contractual agreement.

Government response

The government recognises that a large number of respondents used this question to highlight their opposition to extending marriage to couples of same sex and for the marriages to be held in a church.

The government has been anxious throughout the development of the policy behind the Marriage (Same Sex Couples) Act 2013 to balance the religious freedom of religious groups which do not wish to solemnize marriages of same sex couples and the religious freedom of religious groups which do wish to do so. The government believes that the approach in these draft regulations is appropriate and strikes the right balance between groups which wish to solemnize marriages of same sex couples and groups which do not.

Conclusion and next steps

The government has carefully considered the responses to the consultation. We acknowledge that a large number of respondents sought to use their responses to highlight their opposition to the underlying principles of the 2013 Act. As a result we received substantial numbers of responses that rejected any policy which sought to make regulations allowing places of worship to be registered to solemnize the marriage of a same sex couple. Many of these respondents were concerned that the regulations could undermine religious freedoms and provide a means by which some religious groups would be forced into sharing a building that was registered to solemnize the marriage of a same sex couple.

In contrast a number of other respondents were concerned that some of the regulations could be used to prevent buildings being registered to solemnize the marriage of a same sex couple even where a religious group – or the proprietor or trustee of a building – wished to do so. In this context some respondents were concerned that some organisations would be able to veto registration, even where they were not a primary user of the building.

The government's final policy has, therefore, had to take account of the huge range and divergence of responses and produce regulations which are fair, balanced and workable.

In the consultation documents we made clear that our overarching aim on shared buildings is to strike the right balance between protecting religious freedoms of religious groups who do not wish to solemnize marriages of same sex couples and enabling religious groups to solemnize the marriage of same sex couples where they wish to do so.

In this context we set out three key objectives that the regulations sought to accommodate. These three objectives were as follows:

- the need to ensure that the regulations do not in anyway undermine the overriding principle established by the 2013 Act that no religious organisation should be compelled to conduct marriages of same sex couples;
- the need to ensure that whilst all of the religious organisations sharing a building must consent to the building they share being registered for marriages of same sex couples to take place, this consent does not of itself require any of the organisations to opt in to conduct such marriages unless it wishes to do so; and
- the need to ensure that where possible, religious organisations are able to come to such reasonable agreements amongst themselves about the registration of the building they share. However, the government is conscious that, at the same time, it will be important to ensure that a sharing religious organisation that proposes to conduct marriages of same sex couples is not thwarted from doing so by a veto from a religious organisation that makes limited and/or minimal use of the building.

We consider that, to a great extent, the regulations on which we consulted, achieved these objectives.

As a consequence and having analysed and considered the consultation responses the government has concluded that the majority of the regulations should remain as set out for consultation, subject to any minor drafting changes.

The government intends to proceed with the approach set out in the consultation. A revised draft of the Marriage of Same Sex Couples (Registration of Shared Buildings) Regulations 2014 will be produced for consideration by Parliament in debates in both the House of Commons and the House of Lords.

It is intended that the regulations will come into force in the early part of 2014 so that shared buildings can be registered to solemnize marriages of same sex couples if the qualifying sharing religious groups agree.

Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

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