



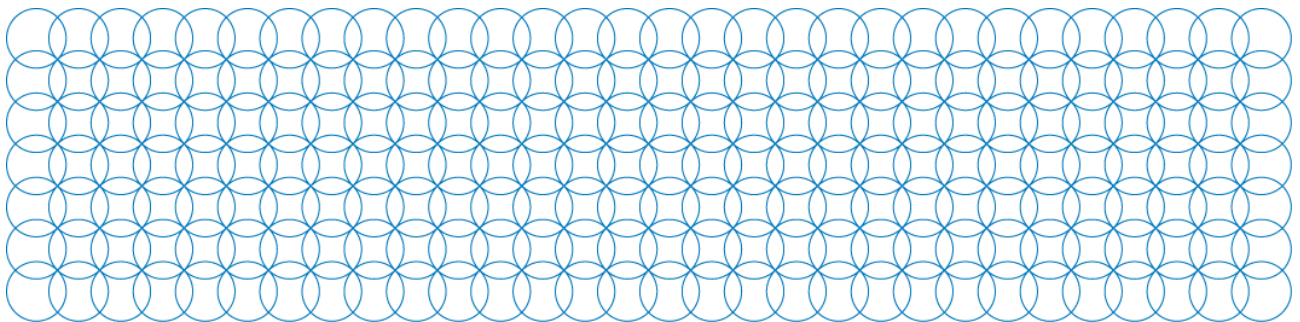
Ministry  
of Justice

# **Marriage (Same Sex Couples) Act 2013**

## Shared Buildings Regulations

This consultation begins on 3 October 2013

This consultation ends on 1 November 2013







Ministry  
of Justice

## **Marriage (Same Sex Couples) Act 2013**

### Shared Buildings Regulations

**A consultation produced by the Ministry of Justice. It is also available on the Ministry of Justice website at [www.justice.gov.uk](http://www.justice.gov.uk)**

## About this consultation

**To:** This consultation is aimed primarily at religious organisations who have experience of sharing buildings. It is also aimed at other religious organisations and individuals with an interest in the implementation of the 2013 Act. Although the legislation and this consultation talk of e.g. 'sharing of church buildings' and 'sharing churches' etc, the existing arrangements and these proposals and draft regulations will apply to Christian denominations and to all other religious organisations, which have sharing arrangements.

**Duration:** From 03/10/13 to 01/11/13

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**Additional ways to feed in your views:**

**Response paper:** A response to this consultation exercise is due to be published by 31/01/14 at: <http://www.justice.gov.uk>

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## Purpose and overview

This paper sets out for consultation the implementation of the 2013 Act and sets out the Government's proposed approach to, and draft regulations (attached in Annex A) for the process for using religious buildings shared by more than one religious organisation for marriages of same sex couples.

The consultation is aimed primarily at religious organisations that have experience of sharing buildings and may therefore need to make practical use of the processes set out in the 2013 Act and draft regulations. It is also aimed at other religious organisations and organisations and individuals with an interest in the implementation of the 2013 Act. Please note that although the legislation and therefore this consultation talk of e.g. "sharing of *church* buildings" and "sharing *churches*" etc, the existing arrangements and these proposals and draft regulations will apply not only to Christian denominations but to all religious organisations of whatever faith, which have sharing arrangements in England and Wales.

## Part 1: Introduction and Background

### 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.

This consultation is part of the implementation of the 2013 Act and sets out the Government’s proposed approach to, and draft regulations (attached in Annex A) for, the process for using religious buildings shared by more than one religious organisation for marriages of same sex couples. These regulations may be refined depending on the nature and content of the responses received in response to this consultation.

### Technicalities of registration of shared buildings

For a marriage of a same sex couple to take place in a religious building (a certified place of worship) the building must be registered for the purpose of solemnizing marriages of same sex couples. This registration is separate to any registration of the building for the solemnization of marriages of opposite sex couples.

Many religious organisations currently share premises. This means that different services and ceremonies (such as weddings, baptisms, funerals and routine services) according to different religious rites can be held in a single building, even when the doctrines of the sharing organisations may differ or even conflict. A number of small religious organisations do not own their own buildings and share virtually all of the places of worship they use, usually by paying rent to the owners of the building.

Some sharing arrangements are the subject of formal sharing agreements, contracts, leases or other formal arrangements. Such formal arrangements are 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.<sup>1</sup>

Not all sharing arrangements are governed by a formal sharing arrangement – especially if the religious organisations have 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 buildings.<sup>2</sup> The draft regulations that are the subject of this consultation are the product of this power. They set

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<sup>1</sup> 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.

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



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 make some proposals for additional provisions that are not covered by the 2013 Act for shared buildings that are the subject of formal arrangements.

The draft regulations do not cover the fees payable to register a shared building to solemnize marriages of same sex couples. The registration process for all places of worship will be covered in The Marriage of Same Sex Couples (Registration of Buildings and Appointment of Authorised Persons) Regulations 2014 that are currently being drafted by the General Register Office. The Registration fee for both formally and informally shared buildings will be the same as is required for any place of worship to be registered to solemnize marriages of opposite sex couples and the registration will last indefinitely unless there is an application to cancel it.

### **Key issues**

In drafting this consultation paper and draft regulations, the Government has been conscious of the views expressed by MPs and Peers during the Parliamentary debates on the 2013 Act<sup>3</sup> on the registration of shared buildings. The Government has also met with representatives of a number of religious organisations to seek their initial views on the content of the draft regulations and the types of issues on which views should be sought by this consultation. The themes that have emerged from the debates and these meetings which underlie this consultation are:

- The need to ensure that the draft 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.
- 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.

### **The consultation**

The Government invites views on the draft regulations and in particular, the 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)

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<sup>3</sup> See, for example House of Commons committee debate on amendments 55 and 43 on 5 March (Hansard columns 378-391) and House of Lords committee debate on amendment 6 on 17 June (Hansard columns 96-100).

- 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.

### Who the consultation is aimed at

This consultation is aimed primarily at religious organisations that have experience of sharing buildings and may therefore need to make practical use of the processes set out in the 2013 Act and draft regulations. It is also aimed at other religious organisations and individuals with an interest in the implementation of the 2013 Act. Please note that although the legislation and therefore parts of this consultation talk of “sharing of *church* buildings” and “sharing *churches*” etc, the existing arrangements and the draft regulations will apply not only to Christian denominations but to all religious organisations of whatever faith, that have sharing arrangements.

The Government is keen to ensure that the final regulations are workable for all types of sharing situation. It also wants to ensure more generally that the regulations strike the right balance between protecting the religious freedom of religious organisations who do not wish to solemnize marriages of same sex couples and enabling those religious organisations who do wish to register places of worship to solemnize marriages of same sex couples to do so.

This consultation paper is set out as follows:

- **Part 2** sets out the relevant provisions of the 1949 Act (as amended by the 2013 Act) that make provision 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.
- **Part 3** provides an overview of the policy behind the draft regulations.
- **Part 4** provides a commentary on the draft regulations and the specific questions on which the Government seeks your views.
- **Annex A** attaches the draft regulations themselves. These draft Regulations set out the Government’s current view on how the shared buildings processes should work. These regulations may be refined depending on the nature and content of the responses received in response to this consultation.
- **Annex B** sets out the relevant provisions of the 1949 Act in relation to shared buildings as amended by the 2013 Act.

Following this consultation, the draft regulations will be considered in light of responses received and, following any amendments that are necessary, will be laid before Parliament. The regulation will be subject to the affirmative parliamentary procedure; this means that they must be debated and approved by both Houses of Parliament before they can come into force.

## **Confidentiality**

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (“FOIA”), the Data Protection Act 1998 (“DPA”) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If the Ministry of Justice receives a request for disclosure of the information it will take full account of your explanation, but it cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry of Justice will process your personal data in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

## Part 2: The Legislation

**Note:** *References in this consultation to provisions in the Marriage Act 1949 (“the 1949 Act”) are to the version of that Act that has been amended by the 2013 Act (so, for example, section 43A of the 1949 Act is referred to below. This section does not appear in the version of the 1949 Act that is available on the Government legislation website (see <http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/76/contents>) because this section was inserted by paragraph 2 of Schedule 1 to the 2013 Act).*

Section 43A of the 1949 Act allows for the registration of a certified place of religious worship<sup>4</sup> for the solemnization of marriages of same sex couples. For such an application to be made, the relevant governing authority of the religious organisation for that building must have given its consent to marriage of same sex couples under section 26A(3) of the 1949 Act. Section 43A(3) of the 1949 Act thus requires the application for registration of the building (for marriage of same sex couples) to be accompanied by a certificate that the relevant governing authority has given such consent. The regulations to be made in respect of section 43A (The Marriage of Same Sex Couples (Registration of Buildings and Appointment of Authorised Persons) Regulation) are the responsibility of the Registrar General and do not form part of this consultation.

Sections 44A to 44C of the 1949 Act allow for the registration for marriages of same sex couples of places of religious worship that are used by two or more religious organisations (i.e. “shared buildings”) and enable regulations to be made in relation to the process for registering shared buildings; the process for cancelling the registration of a shared building; and the use that may be made by religious organisations of shared buildings.

The primary legislation distinguishes between two categories of shared buildings:

- Buildings subject to the 1969 Act. In relation to these shared buildings where formal sharing arrangements apply, sections 44A and 44B of the 1949 Act set out requirements relating to an application for registration and cancellation of a registration (and allow for regulations to supplement those requirements). It is important to note that for these shared buildings, the primary legislation in the 1949 Act as amended by the 2013 Act already provides a requirement for consent by all of the relevant sharing churches to marriages of same sex couples being conducted in the building. An application for registration of a shared building may not be made unless the relevant governing authorities of all the sharing churches (unless they have previously given consent to marriage of same sex couples) have given a separate written consent to the use of the shared building for the solemnization of marriages of same sex couples (see new section 44A).
- In relation to certified places of worship that are shared by more than one religious organisation but not under the 1969 Act and which are therefore covered by informal sharing arrangements, section 44C of the 1949 Act allows regulations to be made about the registration and cancellation process, as well as in relation to the provision of consent by the sharing churches to the building being used for marriages of same

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<sup>4</sup> Certified under The Places of Worship Registration Act 1855.

sex couples. It is important to note that for these buildings there are no requirements set out in the 1949 Act. Such requirements are therefore left entirely to the regulations which are the subject of this consultation.

## Part 3: The Policy

The draft regulations are attached at **Annex A**.

### Overarching aims

The Government's overarching aim with its policy on shared buildings and these draft regulations is to strike the right balance between protecting religious freedoms of religious organisations who do not wish to solemnize marriages of same sex couples and enabling religious organisations to solemnize the marriage of same sex couples where they wish to do so. The Government is also keen to ensure that the final provisions set out procedures that are workable for all types of sharing situation.

These aims are reflected in the Government's approach to buildings subject to formal sharing arrangements under the 1969 Act as set out in sections 44A to 44D of the 1949 Act. In particular:

- Under Section 44A of the 1949 Act if one religious organisation sharing a building wishes to opt in and register the building for marriages of same sex couples, the other sharing organisations must all give their consent to the building being registered for marriages of same sex couples. If a sharing organisation does not give its consent then that building cannot be used for solemnizing the marriage of couples of the same sex. The consent of an organisation to the building being registered does not however, mean that the organisation itself has to opt in to or conduct marriage ceremonies for same sex couples according to its rites, although it is of course free to do so if it wishes.
- Under section 44B of the 1949 Act in order to cancel the registration of a shared building, a cancellation application may be made by either the proprietor or trustee of the building or by the relevant governing authority of any of the sharing religious organisations. The Regulations will supplement this process and the Government proposes to include safeguards that will ensure that proper notification arrangements and notice periods are built into the process.

### Informally shared buildings

The changes to the 1949 Act made by the 2013 Act in respect of shared buildings only apply to shared buildings subject to the 1969 Act and therefore arrangements for informally shared buildings are the primary subject of these draft Regulations. The Government's starting point for such buildings is to ensure that the important principles of protecting and promoting religious freedom which underpin the provisions in the 2013 Act are replicated for the registration, consent procedure and cancellation of the registration of informally shared buildings.

However, the Government is conscious that buildings subject to informal sharing arrangements, particularly those who have ad hoc arrangements, may be used by some religious organisations for purposes other than public religious worship (for example, the organisation might use the building for a reading group meeting or a sports activity). The Government is therefore keen to prevent a situation where a religious organisation that uses a building for regular public worship and that wish to conduct marriages of same sex

couples in a shared building is prevented from doing so by a sharing religious organisation that makes only minimal use of the building for purposes other than public religious worship. This issue does not arise in relation to shared buildings subject to the 1969 Act as the provisions of that Act and the terms of the formal agreements are capable of providing protection from this situation arising.

With that in mind, in relation to informally shared buildings, the Government proposes that there should be a new concept of a “qualifying sharing church” to ensure that there is parity between informally and formally shared buildings in terms of which religious organisations can and cannot consent to the registration of the shared building. Detailed commentary on this proposal is set out in Part 4 below.

### **Other matters for the draft Regulations**

As set out above, the 2013 Act sets out the basic procedures for the registration, and cancellation of the registration of formally shared buildings and the draft regulations will set out the similar basic procedures for the registration, and cancellation of registration of in informally shared buildings. In addition the Government is conscious that the draft regulations will need to ensure that there is the flexibility required to deal with the position where the nature of a sharing arrangement changes, for example, what will happen to a registration when a shared building ceases to become shared? The approach that the Government proposes to take to these issues is to ensure that the religious freedoms of the organisations involved are respected as well as the rights of any couple who may be in the process of applying to have their marriage solemnized on the premises in question. The Government considers it is particularly important to protect couples who may have made plans and incurred expense from being disadvantaged by the cancellation of the registration of the building they have chosen for their marriage.

Finally, the regulations will need to cover situations where a dispute arises, for example, about whether a sharing religious organisation fits the criteria for a “qualifying sharing church”. The Government does not believe that it should have any role in resolving disputes between religious organisations on such matters or that legislation is appropriate in this area as this would amount to dictating to religious organisations the approach they should take to solemnizing marriages of same sex couples. The Government’s proposed approach to the draft regulations is therefore to leave any disputes to be resolved at a local level between the organisations concerned.

### **Appeals against registration decisions**

The Government does not intend to build into these regulations any form of appeal process (either to the courts or to the Government) against a registration decision, as the Government believe it is much more appropriate for religious organisations to settle any disputes amongst themselves. No organisation is compelled to share a building; and sharing arrangements can freely be adjusted, modified or withdrawn by the organisations concerned.

## Part 4: Consultation Questions

### Introduction

The following Part sets out the issues and specific questions on which the Government seeks your views. The issues and questions are grouped according to the draft regulation to which they relate. The draft regulation in question is set out in brackets in the heading of each group of issues and questions.

Before setting out these issues and questions one matter should be noted:

### Separate regulations to deal with procedural matters

Section 43D of the 1949 Act allows for regulations to be made as to the procedures to be followed and fees payable for registration and cancellation applications for religious buildings to be used for the solemnization of marriages of same sex couples. These regulations are the responsibility of the Registrar General and will be separate to those which make specific provision for shared buildings which are addressed in this consultation.

These separate regulations (The Marriage of Same Sex Couples (Registration of Buildings and Appointment of Authorised Persons) Regulations) will be applicable to the registration of all buildings under section 43A (not just shared buildings). There will be no formal public consultation on the regulations under section 43(D) as they will mirror the current processes and fees for the registration of a building for marriages of opposite sex couples under section 41 of the 1949 Act. The General Register Office will, however, be discussing the details of these regulations with interested religious groups.

### Consultation questions

#### 1. Regulation 5: Applying to register shared buildings for marriage of same sex couples

##### Formally shared buildings under the 1969 Act

As set out above in Part 2 and 3, section 44A of the 1949 Act sets out, in detail, the application process for shared buildings that are governed by the 1969 Act.

In order for an application to be made (by the proprietor or trustee) there must be:

- Consent to solemnizing marriages of same sex couples from the governing authority of one of the sharing churches (section 44A(5)); and
- Consent for the use of the building for marriage of same sex couples from the governing authority for all of the other sharing churches. (section 44A (6)).

Given the level of detail in the primary legislation, the Government does not consider that anything further needs to be added to this regime by the regulations for the purposes of registering these shared buildings for marriages of same sex couples. Therefore, draft Regulation 5 does not specify anything further on this.



### **Registration of informally shared buildings outside the 1969 Act**

The Government's proposed starting point for informally shared buildings is to mirror the registration application process that applies for buildings formally shared under the 1969 Act, as per section 44A above. Therefore, Regulation 5 sets out a registration application process that to a large extent follows section 44A of the 1949 Act.

#### *Registration applications*

Under Regulation 5(2) applications for registration must be made in accordance with section 43A of the 1949 Act so it will be for the proprietor or trustee of the shared building to make the application for registration and to provide the required certification, when doing so, that the consent of all of the relevant governing authorities<sup>5</sup> has been obtained.

The role of the superintendent registrar and the Registrar General will be to process the application on the basis of the application as presented. Any question as to who is the relevant governing authority will be a matter for the proprietor or trustee. The Government would expect the proprietor/trustee and the religious organisations who use the proprietor/trustee's building to agree matters and, if need be, to resolve any concerns or issues between themselves.

However, there is an alternative to this procedure that was suggested to the Government during initial discussions with representatives of religious organisations. That procedure would not require the consent of all of the relevant governing authorities that informally share a building. Instead only the consent of the proprietor or trustee of the shared building would be required for any of the organisation that uses the building to register it for solemnization of marriages of same sex couples. The rationale for this approach is that in these informal arrangements one religious organisation should not be able to prevent another from using the building to solemnize marriages of same sex couples. Only the proprietor or trustee should have that control. It would be open to a sharing religious organisation who objected to the shared building being registered for solemnisation to leave the informal sharing agreement and seek new premises for its religious worship.

The Government's preferred approach, subject to consultees' responses, is that set out in Regulation 5(2), namely, that consent of all of the relevant governing authorities should be obtained because:

1. it will ensure consistency with the approach taken to buildings subject to the 1969 Act; and
2. it will ensure that every religious organisation who uses the shared building as a place of worship (subject to what is said below about qualifying sharing churches) will be entitled to a say in the registration of that building.

The Government seeks your views on this issue.

#### *"Qualifying sharing churches"*

As set out in Part 3 the Government proposes that an important new addition be inserted into Regulation 5 to provide that, for informal sharing arrangements, the ability of an

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<sup>5</sup> "Relevant governing authority" is defined in section 26A(4) of the 1949 Act as "the person or persons recognised by the members of the relevant religious organisation as competent for the purpose of giving consent". Relevant religious organisation is defined by the same section as the religious organisation for whose religious purposes the building is used.

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 organisation makes of the shared building.

The Government's justification for this is that it would be unfair for one organisation 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 organisations who use the building on a much more extensive basis may wish to make (or be prepared to consent to). As a consequence Regulation 5(6) and 5(10) introduce the concept of a "qualifying sharing church".

As a starting point the Government proposes (Regulation 5(10)(a)) that the church on whose behalf the trustee holds the shared building on trust should always be a qualifying sharing church, regardless of the extent to which it meets the other qualifying criteria.

For all other organisations, Regulation 5(10)(b) sets out an example of the criteria that might determine whether a sharing organisation is a qualifying sharing church. The Government's current view is that the church must have used the shared building for:

- public religious worship;
- on two or more occasions;
- each of which has lasted for not less than 30 minutes,
- in each calendar month of the six calendar month period ending immediately prior to application for registration; or
- nine of the 12 calendar months ending immediately prior to application for registration

The Government seeks your views on this concept and the content of the above criteria for determining whether an organisation is a qualifying sharing church. In particular it seeks your views on the appropriateness of referring to the minimum nature of the use that religious organisations must make of a building.

**Question 1.**

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

**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?**

**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?**

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

## 2. Regulation 4 and Regulation 6: Cancelling registration of a shared building

### **Advance notice of cancellation applications (formally shared buildings subject to the 1969 Act) (Regulation 4)**

Under section 44B(4) of the 1949 Act an application to cancel the registration for a formally shared building subject to the 1969 Act can be made either by the proprietor/trustee of the building or by the relevant governing authority<sup>6</sup> of one of the sharing churches.

Whilst the Government believes this was the correct approach to take, Regulation 4 intends to provide some additional safeguards to this process as follows:

#### *Notification to the proprietor/trustee of the building*

The Government's current view, subject to consultees' responses, is that whilst it is important that any of the sharing churches can apply to cancel a registration, it is right and proper that the proprietor or trustee (whose building it is) should be made aware of an application for cancellation. The Government thinks 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. Regulation 4(3) therefore provides that a proposed cancellation application, by a church, must be sent three months before it is formally made to the proprietor/trustee of the building.

#### *Ensuring only those who are entitled to apply are able to do so*

The Government is keen to avoid the possibility of an organisation or person making a cancellation application when they are not entitled to (for example if they are not a sharing church, or do not represent that church). With that in mind, Regulation 4(4) provides that the proprietor/trustee on receipt of a notification under Regulation 4(3) must then have the opportunity within three months to object to that application if, for example, it disputes that the applicant is the relevant governing authority of a church that shares use of the building. If the proposed cancellation application is not provided to the proprietor/trustee, or if the proprietor/trustee objects to the application within the three month period then the cancellation application cannot be made.

#### *Protection for couples*

Finally, the Government is keen to safeguard the interests of couples by ensuring that consent for registration cannot be withdrawn at, for example, one day's notice. The Government appreciates that this would be extremely upsetting and potentially financially damaging for couples and feel that some protection for such couples is reasonable. Regulation 5(5) therefore provides that the Registrar General must not cancel the registration earlier than nine months from the date on which the cancellation application is received by the superintendant registrar.

It should also be noted that the Government considers that it should be the duty of owners or trustees of a building to inform couples who have served notice of intention to marry at the church of the cancellation of a registration.

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<sup>6</sup> As to the definition of "relevant governing authority" see footnote 5 above.

**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)?**

**Cancellation of registration for informal sharing arrangements outside the 1969 Act (Regulation 6)**

In relation to shared buildings outside the 1969 Act, the Government's preferred approach to these buildings, subject to consultees' responses, is to mirror the process for cancellations set out above. This is covered by Regulation 6.

However, there is an alternative to this procedure that was suggested to the Government during initial discussions with representatives of religious organisations. The procedure would mean that the only persons capable of making an application for cancellation of a registration would be the proprietor or trustee of the informally shared building. The rationale is that in these informal arrangements one religious organisation should not be able to apply to cancel a registration and thus prevent another from using the building to solemnize marriages of same sex couples. Only the proprietor or trustee should have that control. It would be open to a sharing religious organisation who objected to the shared building's registration being cancelled to leave the informal sharing agreement and seek new premises for its religious worship.

The Government's preferred approach, subject to consultees' responses is that any relevant governing authority should be able to apply to cancel the registration (subject to the safeguards in the draft regulations) because:

1. this approach ensures consistency with the approach taken to buildings subject to the 1969 Act; and
2. it will ensure that every religious organisation that 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.

The Government seeks your views on this issue.

*"Qualifying sharing churches"*

Subject to consultees' responses on the above issues, the Government also considers that the approach for informally buildings in relation to cancellation should be consistent with the approach taken to registration applications. The Government therefore proposes to extend the concept of a "qualifying sharing church" to applications for cancellation of registrations for these buildings. A church would therefore only be able to apply to cancel a registration if it met minimum criteria as to its use of the building. The Government

proposes that the same criteria as those suggested for registration applications should apply here (see Regulations 6(4)(b) and (9)).

**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?**

**3. Regulation 7: Provisions specific to the Society of Friends (Quakers) and Jewish religion**

In Regulation 7 specific provision is made for the governing authority for the Society of Friends and there is the possibility to make a similar provision for persons professing the Jewish Religion (on the latter the Government is awaiting advice from the Board of Deputies of British Jews). This Regulation seeks to make clear who the governing authorities of these religions are for the purposes of the shared buildings regulations. However, the same criteria in respect of qualifying sharing churches set out above will apply.

**Question 4.**

**The Government seek your views on the above approach?**

**4. Regulation 8: Ensuring certainty about which sharing churches may solemnize marriages of same sex couples in a building registered for marriage of same sex couples**

*NB This Regulation applies to both formally and informally shared buildings.*

As set out in Part 3, the Government is of the view that consent to the registration of a shared building 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 therefore considers that there should be provision in the regulations to set out the procedure to be followed by a sharing church where it wishes to consent to the solemnizing of marriages of same sex couples both at the time of the registration and after the building has been registered.

**Where a sharing church wishes to consent to marriages of same sex couples at the time of the registration application (Regulation 8(2))**

It is proposed in Regulation 8(2) that, in the first instance, a sharing church should only be able to solemnize marriages of same sex couples in a shared building (that is registered for the marriage of same sex couples) if that church additionally provides consent to marriage of same sex couples (not just “consent to use”) when the registration application for the building is made. Therefore, if at the time of the registration a sharing church does not provide additional consent to solemnizing marriages of same sex couples it will not be able to do so.

**Where a sharing church wishes to consent to marriages of same sex couples after the registration application is made – Regulation 8(4)**

As above, if at the time of the registration a sharing church does not provide additional consent to solemnizing marriages of same sex couples it will not be able to do so. However, the Government does consider that if such a sharing church later wishes to solemnize marriages of same sex couples it should be able to do so. Regulation 8(4) proposes that the procedure to be followed by such churches in this situation should be as follows:

- The sharing church will provide consent to it solemnizing marriages of same sex couples to the proprietor/trustee and the proprietor/trustee will be able to notify this consent to the superintendent registrar.
- The Registrar General will then be provided with that consent, can note it in relation to the registered building, and then confirm this to the proprietor/trustee, and this further sharing church will then also be able to solemnize marriages of same sex couples in the shared building.

**Question 5.**

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

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

**5. Regulation 9: What happens when a registered building becomes a shared building?**

*NB This Regulation applies to both formally and informally shared buildings.*

The Government is aware that a situation could arise where a building that is registered to enable one church to solemnize marriages of same sex couples later becomes a shared building. It proposes that the regulations should make provision for this situation and the preferred approach to such buildings, subject to consultees’ responses, is that the building should remain registered unless the original church or the newly joining sharing church makes an application to cancel the registration.

However, the Government would wish to safeguard against a newly joining sharing church being able to (potentially and unfairly) 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 application to cancel that building's registration. The Government therefore proposes in Regulation 6(b)(i) that newly joining sharing churches should not be able to apply to cancel the registration until they have used the building for two years.

However, the Government proposes to make clear that this will not require the newly joining sharing church to solemnize marriages of same sex couples unless it wishes to apply to do so under Regulation 8(4) (on which see question 5 above).

**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 - and do you think that two years is the appropriate period for this?**

**6. Regulation 10: What happens when a shared building ceases to be shared?**

*NB This Regulation applies to both formally and informally shared buildings.*

The Government is also aware that a situation could arise where a shared building is registered and then ceases to become a shared building. It therefore proposes that the regulations should make provision for this situation and the preferred approach to such buildings, subject to consultees' responses, is that 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 (i.e. it had provided consent to solemnizing marriages of same sex couples either at the time of the registration or afterwards in accordance with Regulation 8 in addition to consent to the building being registered).

Regulation 10 sets out the procedure for this and provides that the proprietor/trustee would have to notify the superintendent registrar that the building was no longer shared and of the identity of the sharing church that remained able to solemnize marriages of same sex couples.

The Government also proposes that if the remaining church has not previously consented to solemnizing marriages of same sex couples, the registration should be cancelled.

**Question 7.**

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

**7. Regulation 11: What happens when the identity of the sharing churches changes?**

The final situation the regulations provide for is the situation where the identity of the sharing churches changes. In keeping with the proposed approach to changes to the situation where a building ceases to become shared, the Government considers that the preferred

approach, subject to consultees' responses, should be that the registration should continue unless the changes mean that none of the remaining sharing churches has consented to solemnizing marriages of same sex couples. Regulation 11 therefore provides that the proprietor or trustee of the shared building should be required to notify the superintendent registrar of any changes to those who may use the building to solemnize the marriage of same sex couples and, if there remains no sharing church that is able to solemnize marriages of same sex couples, then the registration should be cancelled.

**Question 8.**

**Do you agree with the approach to the situation where the identity of sharing churches changes?**

**8. Regulation 12 and Regulation 13: Address for service of notices**

Under Regulation 12 the Government proposes that the notices to a proprietor or a trustee of a building by a relevant governing authority must be sent to the building to which the notice relates or such building or address as the proprietor or trustee has specified in a written notice sent to the building.

Finally under Regulation 13, the Government proposes that a marriage of a same sex couple may be void if the couple knowingly and wilfully inter-marry in the absence of the required consent as it relates to shared buildings. This Regulation is intended to align the draft regulations with the broader protections contained in the 2013 Act.

**Question 9.**

**Do you have any additional comments on the Government's approach to these draft regulations?**

**Thank you for participating in this consultation exercise.**



## About you

Please use this section to tell us about yourself

<b>Full name</b>	
<b>Job title</b> or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
<b>Date</b>	
<b>Company name/organisation</b> (if applicable):	
<b>Address</b>	
<b>Postcode</b>	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

**If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

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## Contact details/How to respond

Please send your response by 1 November 2013 to:

**Maya Sooben**  
**Ministry of Justice**  
**Family Justice Division**  
**4.32, 4<sup>th</sup> Floor**  
**102 Petty France**  
**London SW1H 9AJ**

**Tel: 0203 334 3127/3125**

**Fax: 0203 334 2233**

**Email: [Marriage\\_Same\\_Sex\\_Couples\\_Act\\_2013@justice.gsi.gov.uk](mailto:Marriage_Same_Sex_Couples_Act_2013@justice.gsi.gov.uk)**

### 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.

### Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

Alternative format versions of this publication can be requested via [Marriage\\_Same\\_Sex\\_Couples\\_Act\\_2013@justice.gsi.gov.uk](mailto:Marriage_Same_Sex_Couples_Act_2013@justice.gsi.gov.uk) or by contacting 0203 334 3127.

### Publication of response

A paper summarising the responses to this consultation will be published in [insert publication date, which as far as possible should be within three months of the closing date of the consultation] months time. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

### Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

### Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

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view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

## 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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