

Church of England May be Forced to Conduct Gay Marriages

Britain looks set to legalize **same-sex** marriages in the next year or two but legal safeguards it will add to protect the Church of England from having to conduct them may not survive the expected court challenges to them.

Presenting the government's proposals on Tuesday, Culture Secretary Maria Miller promised that a "quadruple lock" of legal safeguards would bar any judge from forcing the Church to perform the gay nuptials that its leadership opposes.

"The chance of a successful legal challenge through domestic or European courts is negligible" under a bill being drawn up, she told parliament, calling the planned safeguards "iron-clad."

Legal experts are not so sure. English courts should uphold the law, but the European Court on Human Rights (ECHR)—the Strasbourg tribunal where Europeans can appeal verdicts by their domestic courts—could override a national ruling.

"Whatever the law says, the court has the jurisdiction to overturn it," said Gregor Puppink, director general of the European Center for Law and Justice (ECLJ) in Strasbourg that focuses on defending **religious rights**.

In two cases in recent years, the ECHR found no right to **same-sex marriage** in the European Convention on Human Rights and rejected appeals by gay couples to overrule national laws restricting marriage to a man and a woman.

"I think there is no possibility (of overturning the government's plan) at present," York University sociologist

Paul Johnson said, referring to those rulings.

"I think it would be protected under **freedom of religion** and conscience," said Johnson, who studies the relationship between law, human rights and sexual orientation.

Church Concerns

The Church of England doubts the outlook is that clear. In its official submission to a government consultation on **same-sex marriage** last June, the Church noted the ECHR saw no right to same-sex marriage in European law.

But a 2010 ruling made clear it did not think this meant that same-sex marriages were banned, only that the ECHR left this question to member states to legislate.

Eight European countries already allow gay couples to marry and France and Britain are preparing to do so. Paris wants to pass its law by mid-2013 while London is due to consider a law before its current parliament ends in 2015.

"If a member state chooses to make provision in its domestic law for same-sex marriage, then so far as the ECHR is concerned same-sex marriage is protected by the Convention in the same way that opposite-sex marriage is protected," the Church submission to the consultation said.

"It must be very doubtful whether limiting same-sex couples to non-religious forms and ceremonies could withstand a challenge under the European Convention of Human Rights."

The Church has no position on the law's chances in Strasbourg now because the details of the promised safeguards have not yet been published, a spokesman said. "But we're sure it will end up there," he added.

Discrimination

Puppinck said ECHR judges would consider the Church of England

ban a form of discrimination, especially since **same-sex marriages** would be allowed in other churches if they wanted and even some Anglican clergy support the idea of performing them.

“It will be more and more difficult for churches to deny it,” Puppinck said. “If the matter is debated within the Church, it will be difficult to say it’s a question of doctrine. It’s a matter of opinion in that case.”

Johnson pointed out the planned law would also create legal difficulties for Britain’s civil partnerships, which would still only be open to gay couples.

“We will be the only country in the world, as far as I know, that allows both same-sex and opposite-sex couples to marry but prohibits heterosexuals from having a civil partnership,” he said. “It’s absolutely crazy.”

Puppinck said limiting civil partnerships to gays made sense when they were considered an alternative to marriage, but continuing that would look like discrimination once marriage had been opened to homosexuals as well.

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