



The Lawyers'
Christian
Fellowship

&

Christian Concern for our Nation

The Sexual Orientation Regulations 2007

GUIDANCE

*For churches, charities, organisations and individuals in
England, Wales and Scotland*

Seek justice | Love Mercy | Walk humbly with God

INTRODUCTION

The drafting of the Sexual Orientation Regulations 2007 (SORs) (found at <http://www.opsi.gov.uk/si/si2007/draft/20075920.htm>) left large gaps in the protection necessary to maintain Christian freedom of conscience. For that reason we are producing this guidance document to give information to churches, charities, organisations and individuals about the manner in which the SORs operate, as well as practical suggestions to help ensure that Christians are able to continue to follow the clear teaching of the Bible whilst providing goods and services. For a basic overview of the SORs and how they operate, please read our Frequently Asked Questions document¹.

Christians believe that God's word to man, the Bible, provides a guide for living for the wellbeing of all, and a way for each individual to respond to Him personally through His Son, Jesus Christ. The teaching of the Bible is that all sexual activity outside heterosexual marriage is wrong.

Christians are all too aware that they fall short of God's standards in many areas of their lives, but endeavour with His grace and help to follow the teachings of the Bible. They are also constrained by the love God has shown for them to speak His truth for the benefit of others, particularly the vulnerable and the voiceless.

A particular example of Christian concern is for the welfare of children, and so Christians seek to prevent the harm which comes to them through same sex parenting and the promotion in schools of sex outside marriage. God's plan in the created order is for two parents of the opposite sex. There is evidence that children flourish with a mother and a father and can be psychologically disadvantaged if brought up by same-sex parents².

Christian who decline to promote homosexuality are therefore not doing so out of any hatred of homosexual people, but out of a deep concern for the welfare of those who engage in homosexual acts as well as those around them who will be affected by their behaviour. They are seeking to obey a compassionate God who has the best interests of the human race at heart. Conversely, to promote homosexuality may be regarded as contrary to the laws of God and therefore a sin.

Churches, charities, organisations and individuals who are invited to participate in the promotion of homosexuality through the provision of goods and services after the 30th April 2007 will therefore need to consider the question which the Apostles addressed to the religious establishment in Acts 4:19 "Judge for yourselves whether it is right in God's sight to obey you rather than God".

If placed in such a position there will be a need for Christians to take into account the legal and spiritual consequences of their decisions in the light of the application of the SORs. Where there is a risk that any action Christians are contemplating might contravene the SORs they are encouraged to seek specific legal advice and pastoral guidance.

PLEASE NOTE, NONE OF THE FOLLOWING INFORMATION CONSTITUTES LEGAL ADVICE. IT IS FOR GENERAL GUIDANCE PURPOSES ONLY. ANY ORGANISATIONS OR INDIVIDUALS WHO WISH TO KNOW HOW THE SEXUAL ORIENTATION REGULATIONS WILL APPLY SPECIFICALLY TO THEIR SITUATION WILL NEED TO SEEK PROFESSIONAL LEGAL ADVICE.

¹ Found at <http://www.lawcf.org/index.asp?page=SOR+FREQUENTLY+ASKED+QUESTIONS>

² For example, see <http://www.lawcf.org/index.asp?page=Evidence+of+damage+to+children+raised+in+same%2Dsex+households>

GENERAL GUIDANCE

Christians affected by the SORs broadly fall into three categories:

1. There will be those, such as churches and Bible societies (e.g. the Gideons) who will fall within the definition of a 'religious organisation' and will therefore be exempted from the requirements of the Regulations.
2. Others will fall within the definition of religious organisation, but will lose the protection of the exemption because they are either primarily commercial (for example, some Christian bookshops) or because they provide services on behalf of a local authority, under a contract with that authority (for example, a Christian Family centre funded by the local authority). This category also includes faith schools.
3. The final category is that of Christian organisations and individuals who do not fall under the definition of a religious organisation, and therefore have no exemption from the SORs' requirements. This category could include a Christian Bed and Breakfast, hotel or printing company.

The guidance which is most relevant will depend on which category is applicable to your situation. However, there is some general guidance which we recommend all Christians bear in mind in relation to the effect of a law such as the Sexual Orientation Regulations.

The SORs by their nature represent a step towards the privatisation of faith. In the recent case of the Christian magistrate who felt compelled to resign rather than carry out the requirement to adopt children into same-sex families, the Tribunal held that because the magistrate was free to hold his views in private, it didn't matter that he was unable to act on those views in public. They said *"He retains the right to hold his views. He is also free to air those views. He chose to resign rather than place himself in a position where he might have to do something that he thought was wrong. This is a choice many people feel the need to make in a free country"*.³

We strongly urge Christians to resist this pressure to vacate the public square in these times of increased opposition towards Biblical values and principles. There is a call on Christians to stand publicly for their faith⁴. It is often better for Christians to continue to provide goods and services to the public in accordance with Christian conscience, and to stand firm if and when opponents try and use the law to shut down that provision.

This advice is particularly important because of the confusing manner in which the SORs are drafted: it is likely that many public authorities (and members of the public) will misunderstand them and will seek to impose demands and requirements of Christian organisations and individuals which are not strictly required by the law. Christians should therefore be slow to accede to such demands which seem unreasonable and unacceptable – they should ask what clause in the Regulations justifies their imposition.

Any Christian organisations or individuals considering resigning or withdrawing from the provision of goods and services to the public because of the SORs or similar legislation should contact the Lawyers' Christian Fellowship.

1. GUIDANCE FOR CHURCHES AND OTHER RELIGIOUS ORGANISATIONS

Regulation 14 of the SORs provides certain exemptions from the Regulations for religious organisations. These are defined as organisations which have as their main purpose one or more of the following:

- (a) to practice a religion or belief
- (b) to advance a religion or belief
- (c) to teach the practice or principles of a religion or belief or
- (d) to enable any persons of a religion or belief to receive any benefit, or to engage in any activity within the framework of that religion or belief⁵

However, please note that some organisations that do fall within this definition of religious organisations will still fall outside the Regulation 14 exemption (see section 2. below).

³ *Mr. A McClintock v Department of Constitutional Affairs* (2nd Feb 2007, unreported)

⁴ A call that is rooted in scripture. For example Matthew 5: 14-16 and Matthew 28: 19-20

⁵ Regulation 14(1)

All churches, irrespective of denomination, will fall within the definition of religious organisation. The exemptions allow churches (and other religious organisations) to discriminate on the grounds of sexual orientation

- (a) by restricting membership of the organisation
- (b) by restricting participation in the activities undertaken by the organisation
- (c) by restricting the provision of goods, facilities and services in the course of activities undertaken by the organisation, or
- (d) by restricting the use or disposal of premises owned or controlled by the organisation.

It is important to note that the restrictions listed above (a) to (d) can only be applied where

- 1) it is necessary to do so 'in order to comply with the doctrine of the organisation' or
- 2) the restriction needs to be imposed 'so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers'.⁶

Exactly when and how a religious organisation can discriminate on the grounds of sexual orientation will depend on the particular circumstances. The Lawyers' Christian Fellowship will support Christian organisations who are unclear about the applicability of the above clauses to their situation and refer them to relevant professional legal assistance.

Preaching

The SORs were not intended to impact on freedom of speech in relation to religion. They were certainly not intended to limit what a vicar or minister was able to say in church. We would therefore encourage Christian leaders that their preaching and teaching should continue unaffected by the SORs.

Despite this, there are a number of concerns in relation to preaching which result from the poor drafting of the law. The primary concern is that where a vicar teaches their congregation that they should follow the Bible's teaching on sexual morality even if this were to bring the congregation into conflict with the SORs, the Regulation 14 exemption would not apply (preaching is not covered by (a) to (d) above) and the vicar would be acting unlawfully⁷. For example, it would technically be illegal for a vicar to use the illustration that 'it is better to follow the Bible's teaching and risk being sued than to be complicit in sin by printing leaflets promoting gay pride'⁸.

We will seek assurances from Government ministers that the SORs were not intended to restrict the freedom to preach and we will support any Christians who find themselves challenged under the SORs regarding their preaching. We will direct them to appropriate legal assistance.

Other activities

Under the Regulation 14 exemption, churches and religious organisations will largely be able to discriminate on the grounds of sexual orientation in relation to their activities. For example, in most cases a church will be able to refuse to hire out their hall to a group which wants to promote homosexual practices⁹.

However, if such a gay rights group was to challenge the church's right to do this, the church would have to show that it was "necessary" to refuse to hire out the hall "in order to comply with the doctrine" of the church, or in order to "avoid conflicting with the strongly held religious convictions of a significant number" of Christians.¹⁰

The gay rights group might run the argument "it is within the doctrines of the church to teach that homosexuality is sinful, but there is nothing in the church's doctrine which means that they cannot hire out their church hall to a

⁶ Regulation 14(5)

⁷ According to Regulation 11 which is reproduced at the end of this Guidance pack

⁸ This example assumes that the vicar would support the printing of leaflets promoting heterosexual sex within marriage

⁹ Unless the church is providing services on behalf of a public authority, under a contract – see section 2. below.

¹⁰ Regulation 14(5)

group promoting homosexual practices” (this in fact is a position being espoused by some Christian organisations¹¹).

In order to protect against arguments like this, we recommend that churches and other religious organisations adopt a specific written doctrinal clause to annexe to their basis of faith in order to emphasise that it is their position as an organisation that it is wrong to condone, promote, assist or encourage sinful practices as well as to commit them. Should there be a legal challenge to the organisation this would then be available to use as documentary evidence in court to prove that the Regulation 14 exemption should apply.

Recommendation:

We recommend the following wording to be adopted:

“In light of the Sexual Orientation Regulations, Regulation 14(5), we clarify our doctrine as follows. We follow the teaching of the Bible that all extra-marital sexual practices are sinful and wrong. This includes homosexual practices.¹² The Bible also teaches that we must not be actively or passively complicit in sin¹³ and that faith without works is dead¹⁴. It is therefore part of our doctrine that in relation to any activities of this church we must in no way condone, promote, assist or encourage homosexual practices.”

2. GUIDANCE FOR CHURCHES AND OTHER ‘RELIGIOUS ORGANISATIONS’ WHICH

- i) Exercise public functions on behalf of a public authority under a contract or**
- ii) Are solely or mainly commercial**

There are several key areas in which churches and other religious organisation who appear to fall within the Regulation 14 protection will not (or may not) benefit from exemptions.

Churches and religious organisations exercising public functions on behalf of a public authority under a contract

Where a church or religious organisation that would otherwise fall within the protection of Regulation 14 (see above) provides goods, services, facilities or exercises public functions on behalf of a public authority (e.g. local authority) under a contract (e.g. a contract where the local authority funds a church to provide services on its behalf)¹⁵ then despite being a religious organisation, it will not be exempt from the SORs and would be acting unlawfully if it tried to discriminate on the grounds of sexual orientation.

Thus a Christian Family Centre that provides a weekday crèche or a holiday club for schoolchildren for the benefit of Christian parents or to teach children about Jesus and the Bible, would lose its Regulation 14 protection if it received funding from the local authority to expand the holiday club or crèche to provide services to the general public.

In addition, there is a substantial danger that a church or religious organisation that receives state funding in respect of providing services to the public will lose their Regulation 14 protection in relation to *all* of their activities.

For example, if a church receives funding from the local council to run a soup kitchen, overnight homeless shelter, family centre etc, Regulation 14(8) implies that it will lose all the protections under Regulation 14 and would not even be able to refuse membership of the church to openly practising homosexuals. Although this is the legal implication of the Regulations, it is hard to believe that this is what the Government intended, and it would be hoped that a court would interpret the Regulations in a way that avoids them having this effect.

¹¹ See Faithworks’ position that it would be right, for example, to hire out a church hall to a pro-gay group because “acceptance does not equate with agreement” <http://www.faithworks.info/SubSection.asp?id=2485>

¹² Romans 1; 1 Corinthians 6

¹³ 1 Timothy 5:22; 1 Samuel 2

¹⁴ James 2:17

¹⁵ Regulation 14(8)

We will seek assurances from Government ministers that the SORs were not intended to have this effect and we will support any Christians who find themselves challenged under the SORs regarding this issue.

Recommendation:

In the vast majority of cases churches and other religious organisations will be happy to provide goods and services to homosexuals and heterosexuals alike. It will therefore be the case that usually, should a local authority be offering funding, there will not be a problem accepting that funding.

The caveat to this is that Churches and religious organisations must think carefully in advance of accepting any state funding as to whether there are any circumstances in which provision of their goods or services could require unacceptable condoning, promotion or assistance of homosexual practices. At the same time it would be unwise to focus too much on hypothetical situations which are unlikely to ever materialise. This is a difficult balance that needs to be struck between avoiding being placed in the future in a situation which might force a choice between obeying God and obeying the law, whilst not removing goods and services which might otherwise be a blessing and witness because of the mere possibility of such a compromising situation arising.

It is likely that a local authority will request a guarantee that the organisation will abide by the SORs if they are to be given funding. Again, in most cases this should not be a problem. It may be that an authority will ask how your organisation would respond to certain hypothetical situations in which homosexuals sought to receive the goods and services provided. We would urge caution in responding to such hypothetical situations which can often be misleading and unhelpful. Ultimately an authority should not be able to press for more than a commitment that you will provide goods and services to homosexuals and heterosexuals without discrimination. We would certainly hope that authorities respond in a mature way to these Regulations, respecting the ethos and beliefs of religious organisations, whilst expecting compliance with the basic non-discrimination requirements of the new law.

In a worst-case scenario, if a religious group or church accepted public funding and then found themselves in a situation where they felt they had to discriminate on the grounds of sexual orientation, they could have their funding removed and could also be sued by an individual or individuals who have suffered discrimination. In most cases it is unlikely that significant damages would be ordered against the church or organisation. Damages would include amounts to cover the value of the services denied to the individual, possibly a sum for injury to feelings, and the legal costs of a court case (the latter can be substantial).

Commercial religious organisations

A religious organisation whose sole or main purpose is commercial will not benefit from the Regulation 14 exemptions. However, just because a religious organisation is profit-making or involved in an aspect of commerce, does not mean it automatically falls outside Regulation 14. The exemption *will* apply providing the organisation can show that its main purpose is (a) to practice a religion or belief, (b) to advance a religion or belief, (c) to teach the practice or principles of a religion or belief or (d) to enable any persons of a religion or belief to receive any benefit, or to engage in any activity within the framework of that religion or belief¹⁶.

Recommendation:

We recommend that a religious organisation which is involved in commerce should strengthen the elements of the organisation which relate to (a) to (d) above. Ultimately a court would look at the nature of the activities carried out by the organisation, but they would take into account the charitable instruments (where the organisation has charitable status) the articles and memorandum of association (where the organisation is established as a company) or the constitution (where the organisation is set up as an unincorporated association or other informal body) in determining the main purposes of the organisation.

For this reason we recommend that such religious organisations strengthen their documents which refer to their religious foundations and their founding values. Taking the example of a Christian charity whose purpose is to support Christian work amongst the poor in Africa and who fund that work through selling 'fair trade' goods in England, it would be worthwhile making it explicit in the charitable instruments that the *raison d'être* of the charity is to follow the Bible's teaching to help the poor and needy and the profit-making side is entirely subsidiary to that.

¹⁶ Regulation 14(1)

A Christian bookshop run as a company might have greater difficulty in convincing a court that its main purpose was to advance or teach religion despite the fact it was a profit-making company. However, some steps could be taken such as the recording in an official company document that the reason the company was established was the promulgation of the gospel, and that this takes precedence over profits. An example could be given that a book that was considered heretical, even if it would be very profitable, would not be stocked.

In relation to charities, please note that Regulation 18 will provide almost no protection to the vast majority of Christian charities. Regulation 18 contains an exemption so that any charity which is established specifically in order to serve either homosexuals or heterosexuals, will be allowed to continue to do so (i.e they can discriminate on the grounds of sexual orientation regarding who they provide the services to). Most Christian charities would very much *want* to provide their services to everyone, irrespective of sexual orientation and therefore the Regulation 18 is of no help. It may offer protection to Christian charities which exist to promote marriage, but there would still be an argument that the purpose of the charity was not to 'benefit' heterosexuals as a group, but rather to 'promote marriage' to everyone.

The Government have made it clear that the thrust of Regulation 18 is to benefit homosexual charities. The only examples of charities they intend to cover are "charities that promote LGB rights or provide counselling services for LGB victims of domestic abuse".¹⁷

Faith schools

Our concerns about the Government's confusing and misleading position regarding the SORs' impact on schools are set out in our Frequently Asked Questions document¹⁸. It seems that some schools and authorities are already interpreting the SORs as including a positive requirement to promote homosexuality.¹⁹ However, we would recommend that faith schools (as well as Christian teachers in state and independent schools) use the Government's repeated assurances that the SORs will not impact on what is taught in schools to continue to freely promote marriage and Biblical teaching about morality.

Although their assertions are not strictly supported by the wording of the SORs, the following Government statements can be relied upon:

"The regulations are not concerned with what is taught in schools" (Lord Rooker, Hansard, 13th December 2006)

"The Regulations will not prevent individual teachers from expressing comments or viewpoints in the area of sexual orientation based on their particular religion, again provided this is done in an appropriate way" (Letter from Alan Johnson, the Department for Education and Skills, 30th October 2006)

"We do not believe that a sustainable case for litigation could be made on the grounds a school promotes marriage in accordance with its religious ethos and does not actively promote civil partnership" (Baroness Andrews, Hansard, 21st March 2007, Column 1294).

It is important that teachers and schools do not weaken their teaching on sexual morality and associated issues because of the SORs.

We do urge Christian teachers to be aware of the potential of litigation and test cases brought under the confusing education provisions of the SORs (again, see our FAQs for more information on this²⁰.) The Lawyers' Christian Fellowship will support any Christians who find themselves challenged under the SORs and refer them to appropriate legal assistance.

¹⁷ Paragraph 3.39 of the Government SOR consultation

¹⁸ See <http://www.lawcf.org/index.asp?page=SOR+FREQUENTLY+ASKED+QUESTIONS>

¹⁹ See http://www.dailymail.co.uk/pages/live/articles/news/news.html?in_article_id=441542&in_page_id=1770

²⁰ *Ibid*

3. GUIDANCE FOR CHRISTIAN ORGANISATIONS AND INDIVIDUALS WHO DO NOT FALL WITHIN THE DEFINITION OF RELIGIOUS ORGANISATION

B&Bs

There is no exemption from the SORs for B&Bs. Therefore there is no way of escaping the fact that if a Christian would not be happy to provide a double-bed to a homosexual couple then they would be acting illegally if they made double-beds available to heterosexuals but prevented practising homosexuals from booking them.

There are a few suggestions that can be made for Christian B&B owners to take account of the SORs' requirements, and we invite any people in such a position who would benefit from further guidance to call us on the numbers provided at the end of the document.

In addition it is possible to discriminate on the grounds of sexual orientation in relation to letting out²¹ part of your own house (or a property you own where a close relative resides) providing that the house in question is not big enough to accommodate more than 2 'households' in addition to your own household, or more than 6 individuals, in addition to your own household.²² This is a slight simplification of a complicated clause: there are some other criteria which must be fulfilled to qualify for this exemption.

Equally, where someone owns and occupies the whole of some premises and does not advertise or use an estate agent, they are able to discriminate on the grounds of sexual orientation in how they sell or let the premises²³.

Guidance for Adoption and Fostering Agencies

The situation regarding Christian Fostering and Adoption Agencies is complicated, but there are various possible ways of approaching the challenges raised by the SORs. We are concerned not to see Christian Adoption and Fostering Agencies closing down (including those in receipt of Government funding). We are hopeful that there may be ways of limiting the effect of the SORs on such Agencies and invite any people involved in such organisations to call us on the numbers provided at the end of the document so that we can discuss your particular situation.

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Contact

To discuss any of the above matters further, please call Andrea Minichiello Williams on 07712 591164 or e-mail andrea@williamsa.force9.co.uk

²¹ 'Letting out' being a contractual tenancy agreement, unlike the more casual 'lodgings' agreement previous referred to

²² Regulation 5 and 6 esp Regulation 6(2) and 6(4)

²³ Regulation 6(4)

Annexe: Provisions of the Sexual Orientation Regulations 2007

Regulation 14: Organisations relating to religion or belief

14. —(1) Subject to paragraphs (2) and (8) this regulation applies to an organisation the purpose of which is—

- (a) to practise a religion or belief,
- (b) to advance a religion or belief,
- (c) to teach the practice or principles of a religion or belief,
- (d) to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief.

(2) This regulation does not apply —

- (a) to an organisation whose sole or main purpose is commercial,
- (b) in relation to regulation 7 (Educational establishments, local educational authorities, and education authorities).

(3) Nothing in these Regulations shall make it unlawful for an organisation to which this regulation applies, or for anyone acting on behalf of or under the auspices of an organisation to which this regulation applies—

- (a) to restrict membership of the organisation,
- (b) to restrict participation in activities undertaken by the organisation or on its behalf or under its auspices,
- (c) to restrict the provision of goods, facilities or services in the course of activities undertaken by the organisation or on its behalf or under its auspices, or
- (d) to restrict the use or disposal of premises owned or controlled by the organisation,

in respect of a person on the ground of his sexual orientation.

(4) Nothing in these Regulations shall make it unlawful for a minister—

- (a) to restrict participation in activities carried on in the performance of his functions in connection with or in respect of an organisation to which this regulation relates, or
- (b) to restrict the provision of goods, facilities or services in the course of activities carried on in the performance of his functions in connection with or in respect of an organisation to which this regulation relates,

in respect of a person on the ground of his sexual orientation.

(5) Paragraphs (3) and (4) permit a restriction only if imposed —

- (a) if it is necessary to comply with the doctrine of the organisation; or
- (b) so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers.

(6) In paragraph (4) the reference to a minister is a reference to a minister of religion, or other person, who —

- (a) performs functions in connection with a religion or belief to which an organisation, to which this regulation applies, relates; and
- (b) holds an office or appointment in, or is accredited, approved or recognised for purposes of, an organisation to which this regulation applies.

(7) For the purposes of paragraph (3)(d), "disposal" shall not include disposal of an interest in premises by way of sale where the interest being disposed of is the entirety of the organisation's interest in the premises, or the entirety of the interest in respect of which the organisation has power of disposal.

(8) This regulation does not apply where an organisation of the kind referred to in paragraph (1) or any person acting on its behalf or under its auspices—

- (a) makes provision of a kind referred to in regulation 4, or
- (b) exercises a function of a kind referred to in regulation 8,

on behalf of a public authority under the terms of a contract for provision of that kind between that authority and an organisation referred to in paragraph (1) or, if different, the person making that provision.

Regulation 11. —(1) It is unlawful for a person—

- (a) to instruct another to discriminate unlawfully,
- (b) to cause or attempt to cause another to discriminate unlawfully, or
- (c) to induce or attempt to induce another to discriminate unlawfully.

(2) For the purposes of paragraph (1)(c) inducement may be direct or indirect.

(3) In this regulation a reference to unlawful discrimination is a reference to discrimination which is unlawful by virtue of any of regulations 4 to 8.

(4) Proceedings in respect of a contravention of this regulation may be brought only—

- (a) by the Commission, and
- (b) in accordance with section 25 of the 2006 Act.