

**The response of the Church of England  
to the Government consultation on  
“Preventing Extremism Together: Places of Worship”**

1. In responding to the Government’s consultation document on places of worship, we begin with four points of principle.

**Freedom of religion and worship**

2. The struggle for freedom of religion and freedom of worship, both within the Church and between Church and State, has been the historic struggle from which so many of our present freedoms are derived. It is no exaggeration to suggest that whilst the proposals are put forward with a counter terrorism motivation, those with a sense of the history of the struggle for religious freedom must view them in this context. It is the Church of England’s view that the proposals are misplaced and will hinder rather than further the freedoms of this country without significant impact on the real problems of extremist related terrorism

**Religious difference**

3. The religions of this country are substantively different in their theology, their ecclesiology and in their roles within British history and culture. These differences are reflected in many different ways, and may not adequately be considered as a single collective entity. It follows that to address as ‘places of worship’ collectively, churches, mosques, temples, gurdwaras or synagogues for the purposes of legislation, is to misunderstand the nature of the different religions and their social and cultural settings. The Church of England has a particular place in the history and culture of this country and as a result, the proposed legislation bears on the Church in particular ways and takes no account of its unique representational and other arrangements nor of its particular place in national legislative structures.

**Proportionality**

4. There are in England some 40,000 Christian churches, of which about 16,000 are of the Church of England. These are distributed in virtually every neighbourhood and village in the land and are an essential component in the social fabric of the nation, adding vitally to the social capital of the country. There are of the order of 1750 mosques, and perhaps 500 synagogues, temples and gurdwaras in England, focused in particular areas of the country and contributing essentially to the religious and cultural diversity of the country and to its cohesion. To propose legislation which would in principle apply to every one of these on the basis of a very small number of incidents which were dealt with without recourse to new legislation, seems clearly disproportionate and raises issues under the Human Rights Act.

**Places of worship**

5. To propose legislation in relation to “places of worship that are being used to foment extremism” is to single out in an unwarranted manner, a particular type of location and thereby to imply that these are places of greater risk in relation to terrorism than for example, sports halls, schools, universities or private dwellings. This is to go against all the evidence and unjustifiably to defame the religious affiliation of the very high proportion of the population who visit or worship in churches or other places.

Legislation of this nature, if indeed it is necessary, should not discriminate in this way.

### **Religious discourse**

6. Whilst the intention of the proposals is to “prevent extremism in places of worship”, in practice it is likely to prove difficult for the police or others beyond the particular faith community to assess appropriately the implications of the language of worship, preaching and prayer. For some Faith communities this will be literally a matter translation and interpretation from another language; for all it will require an ability to empathise with the heart of worship, which by its nature is often ‘passionate’. It is not difficult to foresee occasions when those who make complaints to the police, the police themselves, as well as the court considering a requirement order, might find themselves struggling to distinguish appropriately between literal, metaphorical, spiritual and scriptural language
7. It is against these five basic factors that the proposal for legislation to provide the courts and the police with powers to enter churches, close all or parts of them or to ban individuals or groups from entering them, should be considered. The Church of England supports the right and responsibility of governments to take powers to maintain public order and in particular to ensure that violent terrorism is prevented. However there is always a careful judgement to be made about the proportionality of any proposed measure. The Church of England’s judgement in the case of the proposed measures is that they are substantially disproportionate.
8. In addition to these issues of principle, there are also very many matters of practice which add substantial weight to the judgement that the proposals are seriously misplaced and will lead to no reduction in radicalisation or extremism. By contrast they are likely to lead to increased complexity for all concerned, to particular incidents which will be unhelpful all round and will add to the sense of unjust encroachment on people’s liberties.
9. We consider further some the factors above both in relation to principle and to practical issues that arise. The proportionality of the proposed measures is of real concern and we consider this below.

### **Proportionality**

10. By virtue of the Human Rights Act, the legislation will have to be consistent with the European Convention on Human Rights, Article 9 of which protects the right to manifest one’s religion (in “*worship, teaching, practice and observance*”). Both the proposed ‘requirement order’ and the proposed ‘restriction of use order’, with their potential for criminal conviction in the event of their not being complied with, would seem to involve an impairment of that right. If so, they would only be justified if the limitations they imposed could be said to be “... *necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others*”. The latter part of that requirement would be met: the restrictions could be said to serve the ‘legitimate end’ of protecting public order. The question is therefore whether the proposed restrictions on the manifestation of religious belief brought about by the legislation could be said to be in ‘necessary in a democratic society’.

11. In assessing that question, a court would look to see whether the provisions or their application was 'proportionate' in a particular case. In doing so it would consider whether the disadvantage suffered by the applicant was excessive in relation to the legislative aim being pursued by the Government. The court will depend on the facts of the case and on its perception of the relative importance of the right and the severity of the restrictions. There are substantial considerations which suggest that the proposals would not be a proportionate restriction on freedom of religion, especially given the stated purpose of 'supporting' religious communities.

### **Faith communities in general**

12. There is a particular set of such considerations which are relevant to all religious communities:

13. Firstly, it is questionable whether in putting forward these proposals, the Government is giving proper weight to the availability of Charity Commission powers to address issues such as the failure of governing bodies adequately to control the use of their premises or their unauthorised use for improper purposes. In principle, under the English legal system it is the responsibility of the Charity Commission to address failure of that kind. Contrary to the statement in the consultation document that "*the powers held by the Charity Commission in this area are limited*", the Commissioners' powers are already extensive and will be widened further by the Charities Bill currently before Parliament, so that they will be able for example to:

- suspend trustees and employees;
- stop, or restrict, actions by the trustees in dealing with the charity's assets, including land and buildings;
- require trustees to take a particular course of action;
- give directions as to the application of charity property; and
- temporarily appoint a 'receiver and manager' to manage some or all of the affairs of the charity in place of its trustees.

14. Disobedience to the orders of the Commission can already be dealt with as contempt of court. Furthermore, whilst the consultation paper states that "*not all places of worship are owned by charities*", our understanding is that the great majority of places of worship of non-Christian religions are in fact owned by charities.

15. Second, in addition to those provisions of the Charities Acts which will provide a remedy for inaction by trustees, the criminal offences to be created by the Terrorism Bill will provide a criminal sanction in relation to matters such as the encouragement of terrorism or the dissemination of terrorist publications. The objection that: "*prosecution can prove difficult where it is unclear which individual is causing the problem*" does not seem very plausible when the inherent nature of the offences is such that they are likely to be committed in front of large numbers of others present.

### **16. The Church of England**

We turn now to consider the particular situation of the Church of England which is substantively different from that of other religions in this country. Not only has no evidence been provided to suggest that any problems of the kind intended to be addressed by the proposed legislation have arisen in the case of the Church of England; but in addition no consideration appears to have been given to the fact that the internal structures of the Church of England already provide for adequate

remedies in the unlikely event of such problems arising. These factors alone are reason for questioning the proportionality of the proposed legislative.

17. The Church of England's clergy appointments system is such as to make it highly unlikely that a minister would be appointed who engaged in activity of the kind addressed by the proposed legislation. Even if such a minister were appointed, the legal structures of the Church would make it very difficult for him or her to engage in such activity since ministers are required to take decisions jointly with publicly elected representatives of the Church community. Furthermore, even if he or she did engage in such activity, the disciplinary processes of the Church approved by Parliament itself under the Clergy Discipline Measure, would provide a quick and effective way of taking appropriate action.

#### **'Places of worship'**

18. Further considerations arise in relation to the term "places of worship" which would need to be framed with particular care and with specific reference to the Church of England. For Christianity as for other religions, any location, whether within a physical building or not, can be a place of worship. For the Church of England there is a complex matrix of legislation in place which provides for the legal effects of consecration on the status and use of religious buildings. Legislation applying to 'places of worship' would apply not only to parish churches throughout the land but also to cathedrals and royal peculiars such as Westminster Abbey. Depending upon the precise nature of the legislation, however, it might not apply to a series of buildings that are not consecrated but are regularly used for worship.
19. Similar complex issues would arise from the possibility canvassed in the consultation document of the new provisions extending more widely than to "places of worship" alone. This is in itself a recognition of the weakness of seeking to isolate "places of worship" as a particular risk in relation to extremism. Extending the powers in such a way would introduce further complexity for the Church of England – as no doubt for other religions. This could lead to the inclusion, for example, of the 25% of all primary schools in the country and to countless church halls and associated buildings that are commonly used as places for worship. Quite apart from the substantial complications that would arise, these considerations also raise further questions of proportionality given the extreme unlikelihood of such premises being used to promote terrorism.
20. We have developed above some of the severe concerns of principle and practice that arise from the proposals, particularly those that arise in relation to proportionality. There are however, a series of other practical difficulties that arise both generally and for the Church of England in particular, from the point of view of those against whom the proposed orders can be made.

#### **'Control' of a place of worship**

21. The consultation paper appears to assume that the identity of those responsible for 'controlling' a place of worship - the meaning of which is not explained - will be clear and that there will be a single body of such persons: "*The controller may be a trustee or the registered owner on [sic] the property concerned.*" However, that is not necessarily the case.

22. Even in the context to which the proposals are chiefly intended to apply, there may well be more than one body involved, for example, both holding trustees and a management committee, and their respective responsibilities may well not be clear in the context of the proposals. But in the case of the Church of England whose parish churches are not ‘charities’ for the purposes of the Charities Acts, the position is particular. Responsibility for ‘controlling’ a parish church is divided between the incumbent, priest in charge or team vicar; the churchwardens; and the parochial church council. In the case of cathedrals, responsibility rests with the Chapter, but may also involve others, including churchwardens in the case of parish church cathedrals.

The question turns on the question of what amounts to ‘control’, and there would seem to be need for greater clarity in that respect than the consultation document provides.

23. This complexity, which has developed over centuries of both practice and legislative provision, would be exacerbated were the powers to extend beyond “places of worship” to premises such as parish halls and Church schools. In these circumstances, the police will have to take advice as to the correct identity of those against whom they should seek an order. The court to which an application has been made will need to be equipped to determine difficult legal issues as to the respective rights and duties of different parties.

#### **Rights of appeal**

24. In turn these questions raise issues of rights of appeal. The consultation document makes no reference to rights of appeal in relation to an initial application to enable those against whom an order has been made on a mistaken understanding, to challenge it. Similarly, since a successful criminal prosecution will require it to be demonstrated that those against whom an order was made have failed to take reasonable steps to ensure that the specified behaviour ceased, that will involve a complex consideration of their powers and duties. Since the good name of a religious community will be at stake, and in all probability substantial publicity will attend any case, there will need to be rights of appeal.

#### **Conclusion**

25. These are remarkable potential burdens to be placed upon these authorities. If it is argued that there will virtually never be a need for action in the case of churches, then the argument of disproportionality is further strengthened. If there is a real need for such measures, then the government must offer more substantial evidence of than it has yet been able to do and should address them in a more focused manner.

26. The Church of England has warmly welcomed the range of approaches that government in recent years has brought forward to affirm the place of religious communities in the fabric of civil society and the positive contributions they make to the common good. The Church of England has made its own substantial contributions to inter Faith relations over many years and is itself a major contributor to the wellbeing of our society. From these contributions and from its own particular place in the governance of the country, the Church of England would wish strongly to advise that the proposed legislation would run counter to much of the very positive effort that government, the Faith communities and the Churches have made in recent years.

### **Consultation Questions**

1. In the light of the importance of the issues raised by the proposals, we have sought to respond within our own framework of understanding of their implications and potential consequences. We are conscious that although the posing of particular consultation questions can be helpful to government, it can also have the effect of limiting the scope of the consultation.

We set out below brief responses to the questions posed in the Consultation document. These are to be understood only as limited summaries of some of the issues that we have considered in our response.

2. **How great a problem is the issue of places of worship being used to foment violent extremism and how effective are existing measures and powers to counteract them?**

We do not consider that this is a significant problem for churches and for the vast majority of other places of worship in this country. On the contrary we consider that the proposals would be significantly disproportionate.

Existing measures are sufficient, both in relation to the internal structures of churches, the powers of the Charity Commission and existing and proposed counter terrorism legislation.

3. **What more could be done to support faith communities in preventing places of worship being used to foment extremism, short of taking additional powers?**

It follows from the response to the previous question that we do not consider that there is a significant problem and that there is therefore no significant need for further actions in respect of places of worship. Where the authorities have reason to believe that inappropriate activities are taking place, they should take the necessary steps to secure the evidence and draw their concerns to the attention of the relevant authorities. On a more positive note, the government could well continue to develop its broader policies of seeking to engage with Faith communities in the construction of a just and cohesive society

4. **What are your views on the legislative proposal contained in paragraphs 17-22?**

Our views are contained in the body of our response set out above. In essence we regard the proposals as disproportionate and very undesirable

5. **How is your place of worship defined in practice? Does it mean just the space used for preaching and prayer or does it include temporary meeting rooms or faith schools? Would similar powers be useful in respect of these places or other places which are not places of worship?**

We have made it clear in our response that we regard the expression "place of worship" to be too broad to be of value in the context of these proposals. To seek specifically to extend the understanding of it to include schools and halls would be to compound the difficulties

**6. It is important that any power has appropriate safeguards. Application for a requirement order would require very senior authorization in the Police, and would need to be confirmed by a court. Is this sufficient , or would further safeguards be appropriate**

In our view it will be very difficult even for senior police officers and the courts to make appropriately informed judgements about such matters as the nature of preaching - whether in English or other languages, the complex issue of who 'controls' the place of worship, the definition of a 'place of worship', and the different traditions and approaches that exist within any religious community.

Should legislation be proceeded with, provision must be made for appeal at every stage

To

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Dear Bishop Tom,

I attach the final version of the response to the Government's consultation on legislation in relation to places of worship. This takes into account helpful comments and suggestions from various people over the past few days. The response needs to be with the Home Office by close of play tomorrow Friday 11<sup>th</sup> November:

I hope that you will be willing to sign a covering letter for your office to send to the Home Office. It would be helpful if this could be sent to them by Email and by hard copy.

I understand that the Radio 4 Sunday programme will be featuring the responses to the proposals and may have been in touch with you.

Guy Wilkinson

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