



## Same-sex marriage and civil partnerships

Standard Note: SN/HA/5882  
Last updated: 18 December 2012  
Author: Catherine Fairbairn  
Section: Home Affairs Section

---

The *Civil Partnership Act 2004* created a legal union which is very similar, but not fully identical, to marriage. Civil partners have the same rights and responsibilities as married couples in many areas. A legally valid marriage can currently be entered into only by a male and a female, whereas a civil partnership is available only to same-sex couples.

On 15 March 2012, the Government launched a consultation on equal civil marriage asking for views on proposals to remove the ban on same-sex couples being able to have a marriage through a civil ceremony. At that time the Government intended that it would not be possible in law for religious organisations to solemnise religious marriages for same-sex couples. The consultation period ended on 14 June 2012. The consultation received a mixed reaction from interested parties. The Church of England, which opposed the proposals, raised concerns that there might be a successful legal challenge to the plan to limit same-sex marriage to non-religious forms and ceremonies. Some respondents considered that religious organisations which wanted to solemnise same-sex marriage should be allowed to do so.

On 11 December 2012, the Government published its response to the consultation and confirmed its intention to make civil marriage ceremonies available to same-sex couples. The Government now intends to allow those religious organisations that want to conduct same-sex marriages to 'opt-in', without there being any obligation to do so. The Church of England and Church in Wales will not be able to opt-in. No religious organisation or its ministers would be forced to conduct marriage ceremonies for same-sex couples and there is to be a "quadruple lock" of additional measures which the Government states will put this "utterly beyond doubt".

The Scottish Government also intends to legislate to allow same-sex marriage.

This note deals with the position in England and Wales, unless specified otherwise.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

## Contents

<b>1</b>	<b>How does civil partnership differ from marriage?</b>	<b>4</b>
<b>2</b>	<b>What has been the impact of the <i>Human Rights Act 1998</i>?</b>	<b>4</b>
2.1	Background	4
2.2	Should marriage be an option for same-sex couples?	5
2.3	Should civil partnerships be an option for opposite-sex couples?	7
<b>3</b>	<b>Civil partnerships in religious buildings: the <i>Equality Act 2010</i></b>	<b>7</b>
<b>4</b>	<b>Equal marriage consultation</b>	<b>8</b>
4.1	Consultation announced	8
4.2	The Government's consultation paper	8
<b>5</b>	<b>Would churches be obliged to solemnise same sex marriages?</b>	<b>11</b>
5.1	The Government position: no such obligation	11
5.2	The Church of England response: successful legal challenge would be possible	11
5.3	Other comment	13
<b>6</b>	<b>Response to consultation</b>	<b>14</b>
6.1	Church of England	14
6.2	Other religious organisations	15
6.3	Gay rights campaigners	16
<b>7</b>	<b>Government response to Equal Marriage consultation</b>	<b>18</b>
7.1	Civil marriage ceremonies for same-sex couples	18
7.2	Religious marriage ceremonies for same-sex couples	18
7.3	Protection for religious organisations	19
7.4	Civil partnerships	20
7.5	Gender recognition	20
7.6	Wider issues	21
7.7	Timing of legislation	21
<b>8</b>	<b>Parliamentary debate</b>	<b>22</b>
<b>9</b>	<b>Reaction to the Government's revised proposals</b>	<b>23</b>
9.1	Religious organisations	23
9.2	Other reaction	25
9.3	Media articles	25
<b>10</b>	<b>Scotland and Northern Ireland</b>	<b>25</b>

10.1	Scotland	26
10.2	Northern Ireland	26

## 1 How does civil partnership differ from marriage?

The *Civil Partnership Act 2004* (CPA 2004) creates a legal union which is very similar, but not fully identical, to marriage. Civil partners have the same rights and responsibilities as married couples in many areas including tax, social security, inheritance and workplace benefits. However, civil partnership is a completely new legal relationship, distinct from marriage, exclusively for same-sex couples. Colloquially, some people refer to civil partnership as same-sex marriage, and to civil partners as being married, but this is not an accurate statement of the law.

The most significant difference between the two types of union is that a valid marriage can be entered into only by a man and a woman,<sup>1</sup> whereas a civil partnership is available only to same-sex couples.<sup>2</sup> There are also other differences, including:

- civil partnership can only be a civil, and not religious, procedure, whereas opposite-sex couples can, in relevant circumstances, choose to have either a religious or a civil marriage ceremony<sup>3</sup>
- adultery is not a ground for dissolution of a civil partnership (as it is for divorce), nor is consummation a criterion for legal validity (as it is in marriage); however, infidelity may be a contributory factor where ‘unreasonable behaviour’ is cited as a ground for seeking dissolution of a civil partnership
- there are differences in procedure: a civil partnership is formed when the second partner signs the relevant document, whereas a civil marriage is formed when the couple exchange spoken words and then the register is signed.

The Government has pointed out that, for legal purposes, civil partners cannot call themselves married, and married couples cannot call themselves civil partners, and that this means that, when making a declaration of marital status to an employer, public authority or other organisation, an individual who is either married or in a civil partnership will often effectively be declaring their sexual orientation at the same time.<sup>4</sup>

Successive Governments have steadily removed differences between married, cohabiting and same-sex couples by, for example: allowing single people and same-sex couples to adopt; extending domestic violence legislation to all couples; calculating benefits by household occupation rather than marital status; and extending occupation rights to partners and parental responsibilities to all categories of persons.

## 2 What has been the impact of the *Human Rights Act 1998*?

### 2.1 Background

Section 3(1) of the *Human Rights Act 1998* (HRA 1998) requires all UK legislation to be interpreted, as far as possible, in a way which is compatible with the rights laid down in the European Convention on Human Rights. Where it is not possible to interpret an Act in compliance with the Convention, then a declaration of incompatibility may be issued by the court under section 4 of the HRA 1998. The declaration does not invalidate the legislation; it is for the legislature to decide whether to amend the Act.

---

<sup>1</sup> *Matrimonial Causes Act 1973*, section 11(c)

<sup>2</sup> *Civil Partnership Act 2004*, section 3(1)(a)

<sup>3</sup> But see section 3 of this note for information about civil partnership registration in religious buildings

<sup>4</sup> Government Equalities Office, *Equal civil marriage: a consultation*, 15 March 2012, p5

There have been some significant cases in UK courts on the status of same-sex couples since the coming in to force of the HRA 1998. For example, in 2004, the House of Lords case of *Ghaidan v Godin Mendoza* considered the right of a same-sex partner to succeed to a protected tenancy after the death of the tenant under the *Rent Act 1977*.<sup>5</sup> The claimant based his claim on Article 8 (the right to respect for private and family life) and Article 14 (that there should be no discrimination in the rights granted by the state). The House of Lords held that the law should be interpreted so as to avoid discrimination; and there was no reason for treating the same-sex partner of the tenant any differently from the opposite-sex partner when it came to succession.

Two separate but connected arguments have been advanced that, based on perceived rights under the HRA 1998, same-sex couples should be able to marry and opposite-sex couples should be able to enter into a civil partnership.

## **2.2 Should marriage be an option for same-sex couples?**

Although civil partnerships confer rights and responsibilities which are very similar to those conferred by marriage, there have been calls for same-sex marriage to be permitted.

The law does not allow this at present, and in a 2006 case, the Family Division ruled that this does not constitute a breach of human rights legislation. The case in question was *Wilkinson v Kitzinger*. A same-sex couple had married in Vancouver, where the law permits such marriages. They then came to the UK and wanted their marriage to be recognised as such here. They sought from the court a declaration under section 4 of the HRA 1998 that section 11(c) of the *Matrimonial Causes Act 1973*, which provides that a marriage is void unless the parties are respectively male and female, was incompatible with Articles 8, 12 (right to marry) and 14 of the European Convention on Human Rights; likewise section 215 of the CPA 2004, which provides that a relationship formed overseas, even if regarded as marriage there, is to be treated as a civil partnership in the UK. The claimants did not accept that civil partnerships were separate but equal to marriage; in their view, civil partnerships were not equal symbolically.

The court did not accept the couple's arguments and held that the withholding from same-sex partners of the actual title and status of marriage did not constitute a breach of their Convention rights:

By withholding from same-sex partners the actual title and status of marriage, the Government declined to alter the deep-rooted and almost universal recognition of marriage as a relationship between a man and a woman, but without in any way interfering with or failing to recognise the right of same-sex couples to respect for their private or family life in the sense, or to the extent, that European jurisprudence regards them as requiring protection. Withholding of recognition of their married status does not criminalise, threaten, or prevent the observance by, such couples of an intimate, private life in the same way as a married heterosexual couple and indeed provides them, as so far European jurisprudence does not dictate, with all the material legal rights, advantages (and disadvantages) of those enjoyed by married couples. Not only does English law recognise and not interfere with the right of such couples to live in a very close, loving, and monogamous relationship; it accords them also the benefits of marriage in all but name.<sup>6</sup>

---

<sup>5</sup> *Ghaidan v Godin-Mendoza* [2004] UKHL 30

<sup>6</sup> *Wilkinson v Kitzinger* [2006], EWHC 2022, [2007] 1FLR 295

More recently, in June 2010, in a case brought by two Austrians,<sup>7</sup> the European Court of Human Rights ruled that there was no obligation under Article 12 of the European Convention for States to recognise same-sex marriage. In that case, the Court observed that among Council of Europe Member States, there was no consensus regarding same-sex marriage. The Court noted that, looked at in isolation, the wording of Article 12 (the right to marry), might be interpreted so as not to exclude marriage between two men or two women. However, Article 9 of the EU's [Charter of Fundamental Rights](#), which omits any reference to men and women, left the decision on whether or not to allow same-sex marriage to regulation by Member States' national law.

The Council of Europe's [legal explanation](#) of Article 9 states:

This Article is based on Article 12 of the ECHR, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

The EU's Charter of Fundamental Rights was intended to confirm existing human rights guarantees which EU Member States had adopted under various human rights instruments, and it applies to the EU institutions when making EU law and to the Member States when implementing it. The preamble to the Charter states:

This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights.

In the Austrian case, the Court observed that marriage had deep-rooted social and cultural connotations which may differ largely from one society to another, and reiterated that it "must not rush to substitute its own judgment in place of that of the national authorities, who are best placed to assess and respond to the needs of society".<sup>8</sup> The applicants sought to rely on Article 9 of the EU Charter as opposed to Article 12 of the Convention, because the former did not specify that marriage was between a man and a woman. The explanation of this Article (the [explanations](#) are intended to clarify the provisions of the Charter) makes clear that it reaffirms existing rights, albeit with some modernisation in omitting reference to marriage between a man and a woman, and that the status of marriage is for Member States to decide.

---

<sup>7</sup> Case of [Schalk and Kopf v Austria](#) [2010] ECHR 995 (24 June 2010) (Application No. 30141/04) [accessed 18 December 2012]

<sup>8</sup> *Ibid* para. 62

### 2.3 Should civil partnerships be an option for opposite-sex couples?

When civil partnerships were introduced, the previous Government's stated view was that it was not necessary to extend eligibility to opposite-sex couples because they already had the option to marry and the legal consequences of the two institutions were very similar.<sup>9</sup>

The CPA 2004 prohibits opposite-sex couples from entering into a civil partnership. In 2009, this prohibition was challenged by Tom Freeman and Katherine Doyle, who attempted to register as civil partners at their local register office. On being turned away, the couple were reported to have said that they would consider challenging the legislation in the European Court of Human Rights (ECtHR) claiming breaches of Articles 8, 12 and 14.<sup>10</sup>

It has been reported that in February 2011, eight couples, four same-sex and four opposite-sex, filed a joint application in the ECtHR in a bid to overturn the prohibition on same-sex civil marriages and on opposite-sex civil partnerships.<sup>11</sup>

### 3 Civil partnerships in religious buildings: the *Equality Act 2010*

When enacted, the CPA 2004 prohibited civil partnership registrations taking place on religious premises. However, as a consequence of the implementation of [section 202 of the Equality Act 2010](#) (EA 2010) and associated regulations, civil partnerships can now be registered in religious buildings but religious services cannot be used while this is being done.<sup>12</sup>

Section 202 originated from amendments to the *Equality Bill* moved in the House of Lords by the Labour peer, Lord Alli. It was passed by both Houses of Parliament on a free vote.

The EA 2010 specifies that regulations may set out, in relation to particular denominations, who has the authority to decide whether civil partnerships can be registered on any of their premises. It also inserts into the CPA 2004 a statement, for the avoidance of doubt, that religious organisations will not be obliged to host civil partnerships if they do not wish to do so.

A separate Library standard note, [Civil partnerships on religious premises](#) provides further information.<sup>13</sup>

---

<sup>9</sup> Women and Equality Unit, *Civil Partnership – A framework for the legal recognition of same-sex couples*, June 2003

<sup>10</sup> See, for example, "[Heterosexual couple begin legal fight after being refused civil partnership](#)", *guardian.co.uk*, 24 November 2009 [accessed 18 December 2012]

<sup>11</sup> See, for example, "[Gay wedding ban in church may be lifted](#)", *Guardian*, 13 February 2011, see also the [Equal Love campaign](#) website [accessed 18 December 2012]

<sup>12</sup> Section 202 amends section 6 of the CPA 2004 by repealing the legal prohibition on civil partnerships being registered on religious premises in England and Wales. Section 202 also amends section 6A of the CPA 2004, which contains a power to make regulations about the approval of premises for the registration of civil partnerships, by specifying that such regulations may provide for different premises to be approved for registration of civil partnerships from those approved for registration of civil marriages, and for different provision to be made for different kinds of premises. The regulations governing the approval of premises for the registration of civil partnerships had previously aligned provision for civil partnerships with that for civil marriages. Section 202 does not amend section 2(5) of the CPA 2004 which provides that "no religious service is to be used while the civil partnership registrar is officiating at the signing of a civil partnership document".

<sup>13</sup> SN/HA/6510 Last updated 18 December 2012

## 4 Equal marriage consultation

### 4.1 Consultation announced

On 17 September 2011, in a [speech](#) to the Liberal Democrat Conference, Lynne Featherstone, the then Equalities Minister, announced that, in March 2012, the Government would begin a formal consultation on how to implement equal civil marriage for same sex couples, and that this would allow the necessary legislative changes to be made by the end of this Parliament.<sup>14</sup> Yvette Cooper, the Shadow Equalities Minister, welcomed the Government's announcement: "we have called for and support same-sex marriage and we welcome this shift in Government policy."<sup>15</sup>

In his [speech](#) to the Conservative Party Conference on 5 October 2011, the Prime Minister also supported the idea of same-sex marriage:

I once stood before a Conservative conference and said it shouldn't matter whether commitment was between a man and a woman, a woman and a woman, or a man and another man. You applauded me for that. Five years on, we're consulting on legalising gay marriage.

And to anyone who has reservations, I say: Yes, it's about equality, but it's also about something else: commitment. Conservatives believe in the ties that bind us; that society is stronger when we make vows to each other and support each other. So I don't support gay marriage despite being a Conservative. I support gay marriage because I'm a Conservative.<sup>16</sup>

On 24 July 2012, David Cameron said that he was "absolutely determined" that the Government would legislate for same-sex marriage in this Parliament.<sup>17</sup>

### 4.2 The Government's consultation paper

On 15 March 2012, the Government Equalities Office launched [Equal civil marriage: a consultation](#).<sup>18</sup> In a written ministerial statement on the same day, Lynne Featherstone said that it had been argued by some that having two separate provisions for same-sex and opposite-sex couples perpetuated misconceptions and discrimination. The Government considered that the ban on same-sex marriage should be removed. Lynne Featherstone stressed that the consultation would affect civil marriage only:

We are clear that no changes will be made to how religious organisations define and solemnize religious marriages and we are clear that we will retain civil partnerships for same-sex couples.<sup>19</sup>

In the Ministerial Foreword, Theresa May, Home Secretary and at that time Minister for Women and Equalities, and Lynne Featherstone said that the consultation was not about "Government interfering in people's lives" but that it was about providing choice in a modern

---

<sup>14</sup> [Speech in full - Lynne Featherstone, Dods Politics Home](#), 17 September 2011 [accessed 18 December 2012]

<sup>15</sup> Labour website, [We will keep pressure on Government to enact measures like same-sex marriage and make a reality out of their rhetoric - Cooper](#), 19 September 2011 [accessed 18 December 2012]

<sup>16</sup> Conservatives website, [David Cameron: Leadership for a better Britain](#), 5 October 2011, [accessed 18 December 2012]

<sup>17</sup> ["If marriage is good enough for straight people like me, it's good enough for all"](#), *Public Service.co.uk*, 31 July 2012 [accessed 18 December 2012]

<sup>18</sup> Government Equalities Office, [Equal civil marriage: a consultation](#), 15 March 2012

<sup>19</sup> [HC Deb 15 March 2012 cc37-8WS](#)



society: "Quite simply, if commitment and marriage is a good thing we should not restrict civil marriage only to opposite-sex couples".<sup>20</sup>

The consultation dealt with civil marriage (in a register office or on approved premises, such as a hotel). It applied to England and Wales only. The consultation period ended on 14 June 2012.

The Government stated that it aimed to address three issues: to remove the ban on same-sex couples being able to have a civil marriage; not to change how religious organisations solemnise marriages; and to allow transsexual people to change their legal gender without having to legally end their existing marriage or civil partnership:

i. **To remove the ban on same-sex couples being able to have a marriage through a civil ceremony.** The Government recognises that the commitment made between a man and a man, or a woman and a woman in a civil partnership is as significant as the commitment between a man and a woman in a civil marriage. If we recognise the commitment being made is as significant, it is only right that the Government provides couples with the same opportunity to recognise that commitment in the valued institution of marriage. There are a number of differences between civil marriages and civil partnerships as set out below (para 1.10). This consultation is not only about those differences, but also about the principle of no longer distinguishing in civil marriage ceremonies between same-sex and opposite-sex couples.

ii. **To make no changes to how religious organisations solemnize marriages** i.e. marriages solemnized through a religious ceremony and on religious premises would still only be legally possible between a man and a woman. The Government is not seeking to change how religious organisations define religious marriage and any subsequent legislation would be clear that no religious organisation could conduct a religious marriage ceremony on religious premises for same-sex couples.

iii. **To allow transsexual people to change their legal gender without having to legally end their existing marriage or civil partnership.** Removing the bar on same-sex couples being married will enable for the first time, one partner to change their legal gender without having to formally end their marriage. This can be distressing for those couples who want to stay married but cannot currently do so because it is not legally possible for same-sex couples to be married. Equally, couples who are currently in a civil partnership would be able to convert their partnership into a marriage, rather than formally dissolving their civil partnership.<sup>21</sup>

The consultation paper dealt with proposals in a number of areas including the following:

### **Civil marriage**

The consultation paper stated that there is no legal definition of religious and civil marriage but that marriage is defined according to where it can take place.<sup>22</sup> The Government did not propose creating two separate legal regimes for civil and religious marriages but the law would make clear who would be eligible for each. Although the consultation paper dealt with how best to remove the ban on same-sex couples having a civil marriage, and not with whether this should or should not happen at all, the Government stated that it was aware that

---

<sup>20</sup> Government Equalities Office, *Equal civil marriage: a consultation*, 15 March 2012, p1

<sup>21</sup> *Ibid* p4

<sup>22</sup> *Ibid* p7

“there are a number of disparate views on this subject and would like to understand the views of all of those with an interest in this issue.”<sup>23</sup>

The Government stated that it was committed to ensuring fair treatment and equal opportunities for all, including people of all religions. Any legislation on equal civil marriage would make clear that marriages conducted according to religious rites and on religious premises could not be between a same-sex couple and this would protect against successful legal challenges :

This would mean that no religious organisation, premises, or leader would face a successful legal challenge for failing to perform a marriage for a same-sex couple, whether or not the religious organisation, premises or leader involved performs marriages for opposite-sex couples. Any changes to the legislation as a result of this consultation will not, legally, enable same-sex couples to have a marriage through a religious ceremony and on religious premises.<sup>24</sup>

The reasons for ending a marriage would be the same for all couples, regardless of gender and regardless of whether they had entered into the marriage through a religious or civil ceremony:

Specifically, non-consummation and adultery are currently concepts that are defined in case law and apply only to marriage law, not civil partnership law. However, with the removal of the ban on same-sex couples having a civil marriage, these concepts will apply equally to same-sex and opposite-sex couples and case law may need to develop, over time, a definition as to what constitutes same-sex consummation and same-sex adultery.<sup>25</sup>

### **Civil partnerships**

The consultation paper also set out the Government’s intention to retain civil partnerships for same-sex couples only, including the ability to have a civil partnership registration on religious premises (if the religious organisations opted on a voluntary basis to offer such services and retaining the ban on any religious elements forming part of the registration).<sup>26</sup> Same-sex couples would have the option of a civil marriage ceremony or a civil partnership:

This would mean that a same-sex couple of faith could choose to either:

- a. have a civil marriage ceremony (in a registry office or hotel for example) and then, if they wish, seek a separate blessing from their religious organisation on their religious premises if that religious organisation agreed to do this or,
- b. seek to have a civil partnership registration on religious premises if that religious organisation agreed to host the registration on their premises.<sup>27</sup>

The Government stated that it had not identified any need to open up civil partnerships to opposite-sex couples, but asked for views on this.

Civil partners would have the option of converting their civil partnership into a civil marriage should they wish to do so. The consultation paper set out the proposed conversion process.<sup>28</sup>

---

<sup>23</sup> *Ibid* p8

<sup>24</sup> *Ibid* p9

<sup>25</sup> *Ibid* p10

<sup>26</sup> *Ibid* p5

<sup>27</sup> *Ibid* p13

## **Gender recognition**

The Government proposed that transsexual people would not have to end their marriage in order legally to change their gender (as they do at present). This policy would not have retrospective effect.<sup>29</sup>

## **Consequential issues**

The consultation paper also set out a number of areas which would require further consideration, depending on the outcome of the consultation, such as pensions and international recognition, together with some issues which would not be affected, including tax and benefits rights and immigration rules for those coming to the UK.<sup>30</sup>

## **5 Would churches be obliged to solemnise same sex marriages?**

### **5.1 The Government position: no such obligation**

In the consultation paper, the Government said that the consultation would not affect the solemnization of religious marriages. It acknowledged the concerns raised by religious organisations but religious organisations would not be obliged, or even permitted, to solemnise religious marriages for same-sex couples:

It will not be legally possible under these proposals for religious organisations to solemnize religious marriages for same-sex couples. There will therefore be no obligation or requirement for religious organisations or ministers of religion to do this. It will also not be possible for a same-sex couple to have a civil marriage ceremony on religious premises. Marriages of any sort on religious premises would still only be legally possible between a man and a woman.<sup>31</sup>

There would be no duty on Church of England ministers to marry same-sex couples: “As a result, no Church of England minister should face a successful legal challenge for refusing to conduct a same-sex religious marriage”.<sup>32</sup> Other faiths should also not face successful legal action:

We are also aware that the doctrines of many faiths hold the view that marriage can only be between a man and a woman, and this belief is contained within the teachings of their faith. We are clear that no one should face successful legal action for hate speech or discrimination if they preach their belief that marriage should only be between a man and a woman.<sup>33</sup>

### **5.2 The Church of England response: successful legal challenge would be possible**

The Church of England’s response to the consultation was published on 11 June 2012 and expressed concern that there might be a successful legal challenge to the proposal to limit same-sex marriage to non-religious forms and ceremonies, on the basis that same-sex couples were being discriminated against in not being offered the opportunity to marry in church. The Church of England expressed doubt about whether a prohibition on religious marriage for same-sex couples would be held to be proportionate:

36. Providing that same-sex marriages may not be solemnized in accordance with religious forms and ceremonies would probably be held to be pursuing a legitimate aim

---

<sup>28</sup> *Ibid* p12

<sup>29</sup> *Ibid* p14

<sup>30</sup> *Ibid* pp16-17

<sup>31</sup> *Ibid* p3

<sup>32</sup> *Ibid* p9

<sup>33</sup> *Ibid* p9

in that the intention would be to respect the right to freedom of religion: religious bodies should not be required to solemnize marriages contrary to their religious beliefs. But it is very doubtful that a legislative provision which limited same-sex couples to non-religious marriage ceremonies would be held (either by our domestic courts or by ECtHR) to amount to a proportionate means of pursuing that aim.

37. There are religious bodies which have said that they are ready and willing to solemnize same-sex marriages. That being so, a legislative provision which prevented same-sex marriages being solemnized according to any religious forms and ceremonies would be likely to be held to go further than was necessary to meet the legitimate aim of not requiring religious bodies who were opposed to doing so to solemnize same-sex marriages. Moreover, because sexual orientation is one of the 'suspect categories' which require very weighty reasons to justify a difference in treatment the Government would bear a very heavy burden in seeking to show that the means was proportionate to the legitimate aim pursued.

38. It is not possible to predict with certainty the outcome of proceedings that sought to challenge such a provision – either in our domestic courts or in Strasbourg. But if Parliament proceeded to legislate for same-sex marriage, it would not be long before the proposed restriction of same-sex marriage to civil forms and ceremonies came under legal challenge; and such legal challenge would have a good prospect of success.

39. It is doubtful therefore that the line taken in the consultation paper – that same-sex marriages would not be able to be solemnized according to any religious forms and ceremonies – would survive legal challenge.

Nor was the Church of England persuaded by the Government's assurances:

40. The result is that the assurances the Government seeks to give at paragraphs 2.10 and 2.11 of the consultation paper cannot prudently be relied on. ...

42. These assurances are all based on the position being as proposed in the consultation paper: i.e. the limitation of same-sex couples to non-religious forms and ceremonies. If, however, that position were not upheld – either because it was held to be unlawful by the courts or as a result of changes to the applicable legislation during its passage through Parliament or by way of subsequent amendment – the basis for those assurances would fall away.

43. In that scenario a considerable amount of further legislative provision would be required in order to protect the position of the Church of England and other religious bodies. In particular the whole range of rights and duties that exist in relation to marriage and the Church of England would have to be re-examined.

44. Even if a mutually acceptable legislative solution could be found by way of limiting such rights and duties, it cannot be assumed that any such solution would itself withstand subsequent challenge, whether in our domestic courts or in Strasbourg. The ultimate outcome for both Church and State would be quite uncertain.<sup>34</sup>

---

<sup>34</sup> Church of England, *A Response to the Government Equalities Office Consultation - "Equal Civil Marriage"- from the Church of England*, 11 June 2012 [accessed 18 December 2012]

### 5.3 Other comment

In March 2012, an article in the *Daily Mail* reported a ruling of the European Court of Human Rights in the case of *Gas and Dubois v. France*<sup>35</sup> (a case concerning adoption). The original version of the article has been updated and now includes an end note:

An earlier version of this article included the paragraph 'The ruling also says that if gay couples are allowed to marry, any church that offers weddings will be guilty of discrimination if it declines to marry same-sex couples.' The *Daily Mail* is happy to make clear that this statement was not, in fact, contained within the judgement.

The *Daily Mail* article quoted Neil Addison, (described as a specialist in discrimination law) as saying:

Once same-sex marriage has been legalised then the partners to such a marriage are entitled to exactly the same rights as partners in a heterosexual marriage.

This means that if same-sex marriage is legalised in the UK it will be illegal for the Government to prevent such marriages happening in religious premises.<sup>36</sup>

Some commentators though have questioned this interpretation. For example, [Law and Lawyers, The blog of ObiterJ](#) says:

At this stage, I doubt that this will be the case though there is little doubt that the point will be eventually raised. Perhaps sensibly, the government seems to be trying to avoid conflict with religious bodies. Furthermore, Strasbourg jurisprudence, undoubtedly gives States considerable latitude ("margin of appreciation") as to what they do in these very sensitive areas. The government's proposal does not involve requiring religious bodies to conduct same-sex marriage ceremonies.<sup>37</sup>

There has also been comment on the Church of England's concern that the Government's proposals might be challenged successfully. For example, Adam Wagner on the *UK Human Rights Blog* said that he would rate prospects of success at no more (but also no less) than "reasonable":

It may be that once a state decides to implement gay marriage, the court will be less cautious in ruling on how exactly the rules are implemented. But, a claimant would still face very significant hurdles. It is clear from *Schalk* that the European Court of Human Rights is still a long way from seeking to dictate how states should or should not legislate for gay marriage.

Whilst the Church is correct to highlight that *Schalk* was about a state where there was no gay marriage at all, even with the innovation of Article 9 of the Charter and the involvement of Article 14 (anti-discrimination), the Court is still likely to give individual states a wide margin of appreciation as to how it legislates for gay marriage, particularly in the highly sensitive religious context...

(...)

So the Church may be right about a potential human rights challenge to the changes as proposed in the Equal Marriage Consultation. But it has inflated the chances of the

---

<sup>35</sup> Application no. 25951/07

<sup>36</sup> Steve Doughty, "[Gay marriage is not a 'human right': European ruling torpedoes Coalition stance](#)", *Mail Online*, 20 March 2012, updated 8 June 2012 [accessed 18 December 2012]

<sup>37</sup> Law and Lawyers, "[Marriage - the changing scene](#)", 22 March 2012, updated twice [accessed 18 December 2012]

challenge succeeding, as is clear from its own document. More importantly, even if such a challenge was successful, it is inconceivable that a court would force any religious institution to perform a gay marriage; the most that it would do is rule that religious organisations should be given the choice. This is hardly earth shattering. The Church's concerns may be real but they should not be a bar to the proposals becoming a reality.<sup>38</sup>

Ben Summerskill, chief executive of the lesbian gay and bisexual charity, Stonewall, said that there was "no evidence whatsoever that people will take legal cases against the Church of England" because "the opportunity to sue someone if they don't provide a wedding of your choosing" already exists in law:

There are hundreds of thousands of people who get remarried everywhere and the churches already say we will not carry out such weddings.

If there were lawyers and, indeed, excited claimants who wanted to take such a legal case, they would have already been taken in that context.<sup>39</sup>

## 6 Response to consultation

The consultation received a mixed reaction.

### 6.1 Church of England

In its [response](#) to the Government's consultation on equal civil marriage, the Church of England said that it could not support the proposal to enable "all couples, regardless of their gender, to have a civil marriage ceremony". It considered that the proposals "would alter the intrinsic nature of marriage as the union of a man and a woman, as enshrined in human institutions throughout history":

To change the nature of marriage for everyone will be divisive and deliver no obvious legal gains given the rights already conferred by civil partnerships. We also believe that imposing for essentially ideological reasons a new meaning on a term as familiar and fundamental as marriage would be deeply unwise.

The Church of England did not believe (it said) that civil marriage and religious marriage were different institutions:

The consultation paper wrongly implies that there are two categories of marriage, "civil" and "religious". This is to mistake the wedding ceremony for the institution of marriage. The assertion that "religious marriage" will be unaffected by the proposals is therefore untrue, since fundamentally changing the state's understanding of marriage means that the nature of marriages solemnized in churches and other places of worship would also be changed.

The response considered the consultation exercise to be "flawed, conceptually and legally". It also noted that not all LGBT (lesbian, gay, bisexual, and transgender) people were in favour of "re-defining marriage":

The one justification for redefining marriage given to us by the Equalities Minister was that it "met an emotional need" among some within the LGBT community. Without wishing to diminish the importance of emotional needs, legislating to change the definition of a fundamental and historic social institution for everybody in order to meet

---

<sup>38</sup> Adam Wagner, "[Will the European Court force churches to perform gay marriages?](#)" *UK Human Rights Blog*, 12 June 2012 [accessed 18 December 2012]

<sup>39</sup> "[Church of England warning on gay marriage](#)", *BBC News*, 12 June 2012 [accessed 18 December 2012]

the emotional need of some members of one part of the community, where no substantive inequality of rights will be rectified, seems a doubtful use of the law. We also note that by no means all LGBT people are in favour of redefining marriage in this way.<sup>40</sup>

The response went on to consider that the proposals might have a significant impact on the Church's ability "to serve the people of the nation as we have always done".<sup>41</sup> It considered that the consultation overlooked the implications for the position of the established Church:

20. The established institution of marriage, as currently defined and recognised in English law, would in effect, have been abolished and replaced by a new statutory concept which the Church – and many outside the Church – would struggle to recognise as amounting to marriage at all. A man and a woman who wished to enter into the traditional institution of marriage would no longer have the opportunity to do so. Only the new, statutory institution, which defined a "marriage" as the voluntary union of any two persons, would be available.

21. Saying, therefore, as the consultation paper does, that no changes are proposed to marriage according to the rites of the Church of England overlooks the fact that the institution of marriage would have been redefined generally for the purposes of English law. At the very least that raises new and as yet unexplored questions about the implications for the current duties which English law imposes on clergy of the Established Church.

22. A general redefinition of marriage would also have implications for the legislative provisions that are concerned with the Church's teaching on marriage.

23. The Church of England's teaching on marriage is embodied in law. Canon B 30 states: "The Church of England affirms, according to our Lord's teaching, that marriage is in its nature a union, permanent and lifelong, for better for worse, till death them do part, of one man with one woman, to the exclusion of all others on either side...."

24. The Canons of the Church of England are part of the law of England. The Queen's licence and the Royal Assent are required before a canon may be made and promulgated. Canons are additionally subject to statutory provisions which provide that they do not have effect if they are contrary to the customs, laws or statutes of the realm.

25. Were legislation to be enacted by Parliament that changed the definition of marriage for the purposes of the law of England, the status and effect of the canonical provisions that set out the Church's doctrine of marriage as being between one man and one woman would be called into question. In this way too the consultation overlooks the implications of what is proposed for the position of the established Church.<sup>42</sup>

## 6.2 Other religious organisations

The Roman Catholic Church is opposed to the proposal to legalise same-sex marriage. Archbishop Vincent Nichols and Archbishop Peter Smith, President and Vice President of the Bishops' Conference respectively, wrote a letter to be read out at Masses throughout

---

<sup>40</sup> [A Response to the Government Equalities Office Consultation "Equal Civil Marriage"- from the Church of England](#), 11 June 2012, paragraph 16

<sup>41</sup> *Ibid* paragraph 24

<sup>42</sup> *Ibid*, Annex paragraphs 20-25, footnotes omitted

England and Wales on 10/11 March 2012 to voice their opposition to any change in the law and to encourage participation in the consultation.<sup>43</sup>

The Archbishops encouraged people to sign an online petition organised by the Coalition for Marriage, which describes itself as “an umbrella group of individuals and organisations in the UK that support traditional marriage and oppose any plans to redefine it”. The petition has attracted over 620,000 signatures.<sup>44</sup>

A [covering letter from Archbishop Peter Smith](#), sent with the [formal response](#) of the Catholic Bishops’ Conference of England and Wales, raised concerns about the basis on which the consultation was conducted:

The consultation document makes clear that the Government is principally concerned to elicit views on how legislative change could best be achieved and not with whether or not such change should happen. It is of serious concern to us that this proposal, which has such immense social importance for the stability of our society and which has significant implications for the unique institution of marriage and of family life, should be proposed on this basis and with such limited argument. These are issues of great magnitude with far reaching consequences for how our society sees itself well into the future.<sup>45</sup>

Not all religious groups are opposed to the Government’s plans. Quakers in Britain, Liberal Judaism and the Unitarian and Free Christian Churches have voiced support for same-sex marriage.<sup>46</sup>

Quakers in Britain, Unitarians and Liberal Judaism urged the Prime Minister to “stand firm on his commitment to change marriage laws to enable same-sex couples to marry” and wanted to be able to conduct same-sex marriages in their places of worship:

Quakers in Britain, Unitarians and Liberal Judaism are all committed to equality of marriage and ask that any legislation will mean we are free to conduct same-sex marriages in our places of worship.

This is about religious liberty for us, so we don't expect parliament to force others, who may disagree with us, to marry same-sex couples if they do not wish.

We urge you to stand firm and show moral leadership on this issue, which affects the lives of many real people in this country. If, as you have said, same-sex marriage is the right thing to do, then it's right to do it properly, and it's right to do it now.

We would welcome your assurance that this issue remains a priority of the coalition government.<sup>47</sup>

### **6.3 Gay rights campaigners**

Stonewall warmly welcomed the launch of the consultation.<sup>48</sup>

---

<sup>43</sup> The Catholic Church in England and Wales, [Archbishops' Letter on Marriage](#), 8 March 2012 [accessed 18 December 2012]

<sup>44</sup> [Coalition for Marriage website](#) [accessed 18 December 2012]

<sup>45</sup> Response from the Catholic Bishops’ Conference of England and Wales to the Government Consultation on “Equal Civil Marriage”, June 2012 [accessed 18 December 2012]

<sup>46</sup> Liberal Judaism website, [Liberal Judaism, Quakers and Unitarians Welcome Equal Marriage Consultation](#) [accessed 18 December 2012]

<sup>47</sup> Quakers in Britain news release, [Faith bodies urge prime minister on gay marriage](#), 24 May 2012 [accessed 18 December 2012]



In its [detailed response](#), Stonewall said that it supported the introduction of same-sex marriage because gay people still faced prejudice and discrimination:

With the introduction of civil partnerships we believed there would be a marked shift in attitudes which would see measurable reductions in the prejudice and discrimination that gay people face.

Regrettably there is material evidence that this is not the case. Over 20,000 homophobic crimes still take place annually. The vitriol seen in statements by many political and religious figures, particularly some senior clerics, in advance of this consultation demonstrates the persistence of deeply worrying prejudice toward gay people. Same-sex relationships have recently been compared with child abuse, slavery, polygamy and bestiality. This suggests civil partnerships have not been sufficient to diminish the remaining prejudice against gay people.

By insisting marriages and civil partnerships be kept separate, organisations and individuals perpetuate the notion, even if inadvertently, that relationships between same-sex couples are not as stable or valid as those between heterosexual couples.

This offensive discourse has led many people to conclude that the extension of marriage is an appropriate remedy to the discrimination that blights the lives of many of Britain's 3.7m lesbian, gay and bisexual people.

Stonewall did not consider that religious organisations should be forced to solemnise same-sex marriage, but that religious organisations which wished to do so should be allowed to celebrate same-sex marriage. In response to the question: "The Government does not propose to open up religious marriage to same-sex couples. Do you agree or disagree with this proposal?" Stonewall said:

There are already religious organisations which wish to celebrate marriage between two people of the same sex. As far as such religious organisations are concerned, any approach should be entirely permissive and the autonomous decision-making processes of individual faith groups should be respected. This is an important issue of religious liberty and respect. It is important that faith groups that wish to celebrate marriages should be able to do so without inappropriate intervention or obstruction from other groups. Equally, it is important that faith groups who do not opt to celebrate such marriages should have no bearing on the decision of groups who do. Similarly, this is also an important issue of religious liberty and respect.<sup>49</sup>

Peter Tatchell, the gay rights campaigner, argued that the proposed changes were a welcome move, but that they would still discriminate and hinder religious freedom:

While we welcome the commitment to legalise same-sex civil marriages, we are unhappy that the government intends to maintain the ban on heterosexual civil partnerships and the ban on religious same-sex marriages, even if faith organisations wish to conduct them. This is not equality. It perpetuates discrimination.

He considered that, "While no religious body should be forced to conduct same-sex marriages, those that want to conduct them should be free to do so".<sup>50</sup>

---

<sup>48</sup> [Stonewall welcomes the opening of the equal marriage consultation](#), 15 March 2012 [accessed 18 December 2012]

<sup>49</sup> [Stonewall Response](#), 20 March 2012 [accessed 18 December 2012]

<sup>50</sup> ["Gay marriage proposals are welcome but flawed"](#), *PinkNews.co.uk*, 15 March 2012 [accessed 18 December 2012]

The [Coalition for Equal Marriage](#) is running an [online petition](#) for people to support “the right of two people in love to get married, regardless of gender. It's only fair”. It has attracted over 64,000 signatures.<sup>51</sup>

## 7 Government response to Equal Marriage consultation

On 11 December 2012, the Government published its [response](#) to the consultation on equal civil marriage,<sup>52</sup> together with a [fact sheet](#) about equal marriage.<sup>53</sup> Over 228,000 responses had been received, together with 19 petitions, one of which, from the Coalition for Marriage, (which opposed the proposals) had 509,800 signatures. This was stated to be the largest response ever received to a Government consultation. The response document states that the majority of responses to the consultation (not including petitions) supported opening up marriage to same-sex couples.

The response sets out how the Government intends to proceed with proposals which have been revised in relation to religious marriage.

The Government intends to publish an updated impact assessment when the legislation is introduced to Parliament.

### 7.1 Civil marriage ceremonies for same-sex couples

The Government recognises that there is a broad range of strongly-held views on the issue of same-sex marriage. The response document confirms the Government's commitment to changing the law to make civil marriage ceremonies available for same-sex couples and states that this would strengthen the institution of marriage:

At its heart, marriage is about two people who love each other making a formal commitment to each other. We do not believe that this commitment is any different whether it is made by a same-sex couple or an opposite sex couple. We believe that by allowing same-sex couples to get married we are further strengthening the institution of marriage.<sup>54</sup>

Same-sex couples would have to follow the same administrative process and use the same contracting words or vows as opposite-sex couples. Same-sex couples would refer to each other for legal purposes as “husband and husband”, or “wife and wife”; an opposite-sex couple would continue to use “husband and wife”. The Government does not intend to change the other criteria that are currently in place to determine who can form a marriage (eg age of consent, family links, between two people only).

Superintendent registrars and registrars, as public servants, would be required to conduct marriage ceremonies for same-sex couples, on the same basis as civil partnership registrars are currently required to register civil partnerships for same-sex couples.<sup>55</sup>

### 7.2 Religious marriage ceremonies for same-sex couples

The consultation proposed that religious organisations would not be able to conduct marriages for same-sex couples. However, the Government now intends to allow those

---

<sup>51</sup> [Coalition for Equal Marriage website](#) [accessed 18 December 2012]

<sup>52</sup> HM Government, [Equal marriage: The Government's response](#), December 2012

<sup>53</sup> Home Office website, [The facts about equal marriage](#), December 2012 [accessed 18 December 2012]

<sup>54</sup> HM Government, [Equal marriage: The Government's response](#), December 2012 p11

<sup>55</sup> *Ibid* p14

religious organisations that want to conduct marriages for same-sex couples to ‘opt-in’, without there being any obligation to do so:

4.18 After taking all the views expressed into account, we believe that there is strength in the argument that, once marriage is made available to same-sex couples, religious organisations should be permitted to conduct such ceremonies if they wish to. We will continue to work with faith organisations who wish to marry same-sex couples as we develop the detailed process for this to happen.

The Church of England and Church in Wales, however, would not be able to opt-in and it would be “illegal” for these churches to marry same-sex couples:

4.21 We fully recognise the unique position of the Church of England as the Established Church. Concerns have understandably been raised that, if the law in England were to change to allow the marriage of people of the same sex, this would fundamentally conflict with the Canon law. The Church of England pointed out in its response that by law “Canons ... do not have effect if they are contrary to the customs, laws or statutes of the realm”.

4.22 We do not dispute the Church’s authority here; however it is equally true that Parliament is sovereign and can enact to take account of potential conflicts with the Canon law. In the case of marriage, the legislature has, in the past, sought to avoid conflict with the Canon law position by the use of exemption and conscience clauses so that the Church might take a position in conscience that is consistent with its teaching on the nature of marriage. So, for example, although legislation allows that people who are divorced to marry again, the Church and individual ministers, through convocations of the clergy, have been relieved of the obligation to marry such people.

4.23 We will likewise ensure that the legislation does not interfere with the Canon law understanding of marriage (Canon B 30), which we accept will be narrower than that of the civil law. Neither is it our intention to create parallel institutions of marriage. ...

### **7.3 Protection for religious organisations**

It would be unlawful for an individual church or place of worship belonging to that faith to marry same-sex couples without the agreement of its governing body.<sup>56</sup>

The Government response states that no religious organisation or its ministers would be forced to conduct marriage ceremonies for same-sex couples and sets out a “quadruple lock” of additional measures which (the Government states) would put this “utterly beyond doubt”:

- ensuring the legislation states explicitly that no religious organisation, or individual minister, can be compelled to marry same-sex couples or to permit this to happen on their premises;
- providing an ‘opt-in’ system for religious organisations who wish to conduct marriages for same-sex couples;
- amending the Equality Act 2010 to reflect that no discrimination claims can be brought against religious organisations or individual ministers for refusing to marry a same-sex couple or allowing their premises to be used for this purpose; and
- ensuring that the legislation will not affect the Canon law of the Churches of England or the Church in Wales.<sup>57</sup>

---

<sup>56</sup> *Ibid* p7

The Government intends that the legislation will protect religious organisations from successful legal challenge:

4.24 Both the case law of the European Court of Human Rights and the rights enshrined in the European Convention on Human Rights put the protection of religious belief in this matter beyond doubt. We will draft the legislation to ensure that there is a negligible chance of a successful legal challenge in any domestic court, or the ECtHR that would force any religious organisation to conduct marriages for same-sex couples against their will. Any possible claims would be brought against the Government, rather than an organisation to ensure religious organisations would not have to use their resources to fight any legal challenges. We know of no national court attempting to do this in a member state and have no intention of introducing legislation that will have this effect. We will vigorously oppose any attempt to undermine the long-held freedom that religions have in this country to preach, teach and put into practice their beliefs about marriage.

4.25 The ECtHR has made it clear that the European Convention of Human Rights does not impose an obligation on states to grant same-sex couples access to marriage; this is a matter for an individual state's discretion according to its society's needs and conditions (see *Schalk & Kopf*, paragraphs 60 – 63). Despite assertions to the contrary, the more recent case of *Gas & Dubois v France* provides no authority for the contention that, if a member state decides to allow for same-sex couples to marry, it must also require religious organisations to do so.<sup>58</sup>

#### **7.4 Civil partnerships**

The Government intends to retain civil partnerships for same-sex couples, including continuing to allow civil partnerships on religious premises, but will not make them available to opposite-sex couples. Marriages between same-sex couples formed abroad would be recognised as marriages; same-sex civil unions (that are not marriages) would be recognised as civil partnerships in the UK.<sup>59</sup>

There would be a process by which existing civil partnerships might be converted into civil marriages, but there would be no obligation to convert. The process would not be time limited.

Couples would be able to have a ceremony upon conversion if they wished to do so, although this would have no legal effect and would be similar to existing ceremonies allowing couples to renew their vows. The ceremony could take place on religious premises, if agreed with the religious organisation. It would not be possible to convert from a marriage into a civil partnership.<sup>60</sup>

#### **7.5 Gender recognition**

Individuals would be able to change their gender legally while remaining married. Those in a civil partnership registered in England or Wales would have the option to convert their civil partnership without being seen as legally ending that union and rights accrued within the civil partnership would remain.<sup>61</sup>

---

<sup>57</sup> HM Government, *Equal marriage: The Government's response*, December 2012, p6

<sup>58</sup> *Ibid* p18

<sup>59</sup> *Ibid* p21

<sup>60</sup> *Ibid* p24

<sup>61</sup> *Ibid* p28

## 7.6 Wider issues

The response document also addresses a number of wider issues including:

- administrative processes for marriage and civil partnerships, which would remain the same overall
- devolution<sup>62</sup>
- non-consummation and adultery: in the consultation, the Government had proposed to allow case law to develop in order to create 'new' definitions of non-consummation and adultery for same-sex couples. In the light of consultation responses the Government now intends to create an exception for same-sex couples (only) in a marriage, meaning that they would not be able cite non-consummation as a basis for annulling their marriage. Anyone, including same-sex couples, would be able to cite adultery to end their marriage if the behaviours currently defined in case law are exhibited<sup>63</sup>
- international recognition of legal same sex relationships
- pensions
- free speech: the Government intends that no one should face successful legal action for hate speech because they preach the belief that marriage can only be between a man and a woman
- education: teachers would be able to describe their belief that marriage is between a man and a woman, while acknowledging that same-sex couples can also marry:

9.27 Every school is required to ensure pupils are not taught anything that is inappropriate to their age, religious or cultural background. This will not change and pupils will continue to receive broad and balanced advice on marriage.

9.28 In addition, teachers, particularly in a faith school, will be able to continue to describe their belief that marriage is between a man and a woman whilst acknowledging and acting within the new legislative position which enables same-sex couples to get married. They must continue to act within the current parameters of legislation on hate speech and discrimination law.

9.29 Teachers are expected to respect the rights of others and to respect those with different beliefs. They should ensure that their personal beliefs are not expressed in a way that exploits pupils' vulnerability or involves discriminating against them. That does not mean, however, that teachers need to agree with the views of others or with the way in which other people exercise their rights. It should always be a matter for the head teacher to determine what teachers under their control should be teaching and what is expected of their staff.

- parenting: there is no intention to remove the terms mother and father, or replace them with terms like 'Progenitor A and Progenitor B' as was raised by some organisations

## 7.7 Timing of legislation

The response document outlines the intended timescale for legislation:

---

<sup>62</sup> Discussed in the next section of this note

<sup>63</sup> HM Government, *Equal marriage: The Government's response*, December 2012, p31

The Government is committed to introducing this legislation within the lifetime of this Parliament and we are working towards this happening within this Parliamentary Session. Over the next weeks, we will continue to work closely with all organisations that have an interest in these proposals.<sup>64</sup>

## 8 Parliamentary debate

On 11 December 2012, Maria Miller, the Minister for Women and Equalities, made a statement to the House and set out how the law relating to marriage had evolved.<sup>65</sup> She recognised that the proposals to allow same-sex couples to marry were contentious and stressed that there should be “complete respect for religious organisations and individual religious leaders who do not wish to marry same-sex couples”. She spoke of the protection to be given to religious organisations

The Government’s legal position has confirmed that, with appropriate legislative drafting, the chance of a successful legal challenge through domestic or European courts is negligible. I have therefore asked the Government’s lawyers to ensure that that is the case. Our response sets out clear safeguards—a quadruple lock of measures to protect religious organisations. The Government have always been absolutely clear that no religious organisation will be forced to conduct same-sex marriages. The system of locks will iron-clad the protection in law, adding to the existing protections in European legislation, so that those who do not want to conduct same-sex marriages will never have to.<sup>66</sup>

The Minister set out further information about the proposed “opt-in”:

the legislation will make it unlawful for religious organisations or their ministers to marry same-sex couples unless the organisation has expressly opted to do so. As part of this lock, a religious organisation will have to opt in as a whole, and each individual Minister will then have to opt in too. Therefore, if a religious organisation has chosen not to conduct same-sex marriage, none of its Ministers will be able to do so. However, if an organisation has chosen to conduct same-sex marriage, individual Ministers are still under no compulsion to conduct one unless they wish to do so.<sup>67</sup>

The unique position of the Churches of England and Wales would be recognised:

Finally, because the Churches of England and Wales have explicitly stated that they do not wish to conduct same-sex marriage, the legislation will explicitly state that it would be illegal for the Churches of England and Wales to marry same-sex couples. That provision recognises and protects the unique and established nature of those Churches. The Church’s canon law will also continue to ban the marriage of same-sex couples. Therefore, even if those institutions wanted to conduct same-sex marriage, it would require a change to primary legislation at a later date and a change to canon law—additional protection that cannot be breached.<sup>68</sup>

Yvette Cooper supported the proposal to allow same-sex marriage and said that she had argued for some time that those Churches and religious organisations that want to be able to celebrate same-sex marriage should be able to do so.<sup>69</sup>

---

<sup>64</sup> *Ibid* p8

<sup>65</sup> [HC Deb 11 December 2012 c155](#)

<sup>66</sup> [HC Deb 11 December 2012 c156](#)

<sup>67</sup> *Ibid*

<sup>68</sup> *Ibid*

<sup>69</sup> [HC Deb 11 December 2012 c157](#)

Other Members also welcomed the proposals. For example, Nick Herbert (Conservative) spoke of the “widespread support in the country, as all opinion polls show”.<sup>70</sup> Sandra Osborne (Labour), Chair of the All-Party group on Equalities, said that it was “not a matter of redefining marriage, but of extending it to a group that currently does not have that right”.<sup>71</sup> Stephen Williams (Liberal Democrat) referred to the Government’s announcement as “a major strike for civil rights and equality in our country”.<sup>72</sup>

A number of Members opposed the proposals and questioned how much support the proposals had among the general public. For example, Stewart Jackson (Conservative) called the proposals “a constitutional outrage and a disgrace”, with no electoral mandate.<sup>73</sup> Sir Gerald Howarth (Conservative) said that the consultation exercise had been “a complete sham”; and that the Government had failed to take into account the 600,000 people who signed the Coalition for Marriage petition.<sup>74</sup>

Maria Miller said that the Government had looked not only at the consultation responses but at the petitions “although they are not part of the consultation response because they were not part of the consultation”. She said it was important to consider both sides of the debate, “understand the strength of feeling and make provisions for people’s religious beliefs”.<sup>75</sup>

Laurence Robertson (Conservative) said that “although there are religious and civil ceremonies, there is only one marriage, and many people of all faiths and no faith are deeply offended...by these proposals”.<sup>76</sup>

## **9 Reaction to the Government’s revised proposals**

Early reaction to the Government’s revised proposals includes the following.

### **9.1 Religious organisations**

Some religious organisations are strongly opposed to the proposals; others are supportive. Published comments include:

- The Church of England has published an explanatory note on the effect of the Government’s revised proposals which refutes the suggestion that the Government and Parliament would be imposing a prohibition or “ban” on what the Church of England can do:

It is instead the Government responding to the Church's wish to see the status quo for the Church of England preserved and accepting, as for other churches and faiths (though the legal framework is different for them), that it is not for the Government and Parliament to determine matters of doctrine.

...Because the Canon Law of the Church of England is also part of the public law of the land and cannot be in conflict with statute law, it is important that any legislation for same-sex marriage makes it clear that it does not apply to marriage according to the rites of the Church of England. ...

---

<sup>70</sup> [HC Deb 11 December 2012 c159](#)

<sup>71</sup> *Ibid*

<sup>72</sup> [HC Deb 11 December 2012 c167](#)

<sup>73</sup> [HC Deb 11 December 2012 c163](#)

<sup>74</sup> [HC Deb 11 December 2012 c166](#)

<sup>75</sup> *Ibid*

<sup>76</sup> [HC Deb 11 December 2012 c169](#)

The effect of what the Government has proposed is to leave decisions about the doctrine and practice of the Church of England with the Church of England. Any change to the Church of England's doctrine and practice of marriage would require legislation by the Church's General Synod. In addition to an Amending Canon that redefined the nature of marriage such a legislative package would also involve the General Synod passing a Measure (the General Synod's equivalent of an Act of Parliament) that altered both the statute law concerning marriage according to the rites Church of England and the marriage service in the Book of Common Prayer.

All Synod Measures require parliamentary consent. ...As the General Synod's devolved legislative powers includes the ability to amend Westminster legislation it would not require separate, additional legislation on the part of Parliament to enact any change to the Church's practice on marriage. Talk of additional 'barriers to opt-in' for the Church of England following the Secretary of State's announcement is therefore misplaced.

For Parliament to give the Church of England an opt-in to conduct same sex marriages that it hasn't sought would be unnecessary, of doubtful constitutional propriety and introduce wholly avoidable confusion...<sup>77</sup>

- Archbishop Vincent Nichols and Archbishop Peter Smith, President and Vice-President of the Catholic Bishops' Conference of England and Wales, strongly oppose the proposals and have described the process as “shambolic”<sup>78</sup>
- The Muslim Council of Britain (MCB) opposes what it calls “the utterly discriminatory provision of the new gay marriage legislation proposed by the government”. Farooq Murad, the Secretary General of the MCB said, “It is not just the ‘Church of England and Church in Wales’ who “explicitly” stated strong opposition’ ... the Muslim Council of Britain along with most other faith groups also made equally strong representation”. He said “the proposals should be amended to give exactly the same exemption to all the religions”<sup>79</sup>
- The Quakers in Britain support the proposals. Paul Parker, recording clerk for Quakers in Britain said: “The day the first same-sex couple can marry in their Quaker meeting will be a wonderful day for marriage, and a great day for religious freedom in Britain. Quakers greet the news we can ‘opt in’ to equal marriage with enthusiasm, but await the details of how this will work in practice.”<sup>80</sup>
- Liberal Judaism spoke of a “victory in equal marriage fight”. Liberal Judaism chief executive Rabbi Danny Rich said: "Liberal Judaism, of course, was a pioneer of this measure of equality and created the first ever liturgy for same-sex ceremonies back in 2005. "I am delighted that the Prime Minister has assisted in righting a historic wrong and that the measure now has cross-party support.”<sup>81</sup>

---

<sup>77</sup> Church of England website, [Same-sex Marriage and the Church of England](#), [accessed 18 December 2012]

<sup>78</sup> The Catholic Church in England and Wales, [Statement on the government response to the same sex marriage consultation](#), 11 December 2012 [accessed 18 December 2012]

<sup>79</sup> Muslim Council of Britain, [MCB opposes the discriminatory gay marriage law](#), 17 December 2012 [accessed 18 December 2012]

<sup>80</sup> Quakers in Britain website, [Quaker view on same sex marriages - updated December 2012](#) [accessed 18 December 2012]

<sup>81</sup> Liberal Judaism website, [Victory in equal marriage fight](#), 10th December 2012 [accessed 18 December 2012]



## 9.2 Other reaction

Politicians are divided in their response to the proposals. Conservative MPs are to have a free vote on the issue.<sup>82</sup> It has been reported that Labour MPs will also have a free vote “but all members of the shadow Cabinet are to support the reform”.<sup>83</sup>

Some Members have declared their support or opposition, for example:

- A number of senior Conservative politicians have joined a campaign group, Freedom to Marry, “to win the freedom of same sex couples to marry, and to ensure that religious freedom is protected”.<sup>84</sup>
- Almost 60 members of the Commons and Lords signed a letter to *The Daily Telegraph* setting out their belief that “the Government does not have a mandate to redefine marriage”.<sup>85</sup>

Stonewall Chief Executive, Ben Summerskill, expressed delight about the Government’s statement and warmly welcomed the promise to legislate for equal marriage:

We’re particularly pleased that ministers have been persuaded to extend their original proposal in order to permit same-sex marriages for those religious denominations that wish to hold them. This is an important matter of religious freedom.<sup>86</sup>

## 9.3 Media articles

The Government’s proposals have attracted widespread media coverage of which the following is a small selection:

- “[Boris Johnson and Michael Gove join new Tory campaign group to push for same-sex marriage](#)”, *Telegraph*, 8 December 2012
- “[Church of England and Church in Wales protest at gay marriage ban](#)”, *The Guardian*, 13 December 2012
- “[MPs and Peers launch gay marriage rebellion saying Cameron has 'no mandate'](#)”, *Telegraph*, 16 December 2012
- “[Gay marriage: Muslim leaders seeks same exemption as Church](#)”, *BBC News* 18 December 2012
- “[Now Labour shows the strain over gay marriage](#)”, *Independent*, 18 December 2012

## 10 Scotland and Northern Ireland

In Scotland and Northern Ireland, marriage and civil partnerships are matters for the devolved administrations.

---

<sup>82</sup> [HC Deb 24 May 2012 cc1286-7](#)

<sup>83</sup> “[Now Labour shows the strain over gay marriage](#)”, *Independent*, 18 December 2012

<sup>84</sup> [Freedom to marry website](#), [accessed 18 December 2012]

<sup>85</sup> “[The Government has no mandate to redefine the meaning of marriage](#)”, *Telegraph*, 17 December 2012

<sup>86</sup> Stonewall website, [Stonewall responds to the Government's announcement on equal marriage](#), 11 December 2012 [accessed 18 December 2012]

## 10.1 Scotland

On 2 November 2011, the Scottish Government launched a [consultation](#) on same-sex marriage and religious ceremonies for civil partnerships in Scotland. The consultation period ended on 9 December 2011.<sup>87</sup>

On 25 July 2012, the Scottish Government published an analysis of the consultation and announced that it intended to legislate to allow same-sex marriage, and that the legislation would be accompanied “by important protections for freedom of speech and religion”:

As indicated in the consultation, no religious body will be compelled to conduct same sex marriages - protection for religious bodies who do not wish to conduct same sex marriages already exists under UK equality law.

Where a body does decide to conduct same sex marriages, the Scottish Government also intends - again, in line with the view expressed in the consultation - to protect individual celebrants who consider such ceremonies to be contrary to their faith.

To give certainty around this protection, we consider that an amendment to the UK Equality Act will be required. We will work with the UK Government to secure agreement to such an amendment before the formal introduction of a Bill to the Scottish Parliament and with a view to it being in place before the Bill comes into force.<sup>88</sup>

On 12 December 2012, the Scottish Government launched a consultation on a draft Bill to allow same-sex marriage in Scotland.<sup>89</sup> The consultation seeks views on the detail of the legislation. It covers not only the introduction of same-sex marriage but the detail of protections in relation to religious bodies and celebrants, freedom of speech and education. The closing date for the consultation is 20 March 2013.

In its response to the equal civil marriage consultation in England and Wales, the Government said that it “is working closely with the Scottish Government to ensure the two systems are compatible and that any amendments needed to UK legislation are made through the Parliament at Westminster. We will ensure that marriage of same-sex couples is recognised across the border between England, Wales and Scotland”.<sup>90</sup>

## 10.2 Northern Ireland

The Northern Ireland Assembly has no current plans to legislate for same-sex marriage.<sup>91</sup> The UK Government intends to work closely with the Northern Ireland Executive “to ensure their position is not compromised”. It will be for the Northern Ireland Executive to determine how it recognises marriages conducted in England or Wales for same-sex couples, but the UK Government believes they will be treated as civil partnerships.<sup>92</sup>

---

<sup>87</sup> Scottish Government press release, [Views sought on same sex marriage](#), 2 September 2011 [accessed 18 December 2012]

<sup>88</sup> Scottish Government press release, [Same sex marriage to be legalised](#), 25 July 2012 [accessed 18 December 2012]

<sup>89</sup> Scottish Government, [Marriage and Civil Partnership \(Scotland\) Bill](#), 12 December 2012 [accessed 18 December 2012]

<sup>90</sup> HM Government, [Equal marriage: The Government's response](#), December 2012, p31

<sup>91</sup> [Northern Ireland Assembly 6 February 2012](#)

<sup>92</sup> HM Government, [Equal marriage: The Government's response](#), December 2012, p31