



# ***Marriage (Same Sex Couples) Bill***

**Bill No 126 of 2012-13**

**RESEARCH PAPER 13/08**

The *Marriage (Same Sex Couples) Bill* was introduced into the House of Commons on 24 January 2013 and is due to have its second reading debate on 5 February 2013. It would introduce civil marriage for same sex couples, and enable religious organisations to opt in to conduct same sex marriages if they wish to do so. The Bill includes provisions intended to protect religious organisations and individuals from being forced to conduct same sex marriages. The proposals have proved highly controversial with interested parties expressing strong opinions both for and against same sex marriage. The Bill would also enable civil partners to convert their partnership to a marriage and would enable married transsexual people to gain legal recognition in their acquired gender without having to end their marriage.

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## Research Paper 13/08

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## Summary

A legally valid marriage can currently be entered into only by a male and a female. Marriage may take place in a religious building or in a secular building (depending on the circumstances) and there are rules relating to the permitted venue and celebrant. Clergy in the Church of England and Church in Wales have a common law duty to marry parishioners (with some exceptions); other religious organisations have no such duty.

The Canons of the Church of England form part of the law of the land but cannot be contrary to general law. The Canon which sets out the Church of England's general teaching on marriage refers specifically to marriage between a man and a woman.

The *Civil Partnership Act 2004* created a legal union which is very similar, but not fully identical, to marriage. A civil partnership is available only to same-sex couples. Civil partners have the same rights and responsibilities as married couples in many areas but some have argued that there are differences in the perception of the two institutions.

For some time, arguments have been advanced that, based on perceived rights under human rights legislation, same sex couples should be able to marry. To date, neither the domestic court nor the European Court of Human Rights has upheld these arguments.

On 15 March 2012, the Government launched a consultation on equal civil marriage asking for views on proposals to enable same sex couples to marry through a civil ceremony. At that time the Government intended that it would not be possible in law for religious organisations to solemnize religious marriages for same sex couples. The Government stated that the consultation was about "providing choice for our modern society" and that if commitment and marriage were beneficial, they should not be restricted to opposite sex couples. The consultation period ended on 14 June 2012.

The proposals proved highly controversial with strong opinions being voiced both for and against same sex marriage. The consultation received the highest number of responses to any Government consultation. The Church of England, which opposed the proposals, and others, raised concerns that there might be a successful legal challenge to the plan to limit same sex marriage to non-religious forms and ceremonies. The Church also raised concern about the effect of the proposals on Canon law. A number of religious organisations (and others) were strongly opposed to what they considered to be an attempt to redefine marriage and the effect this would have for society. Some condemned the consultation process because it focussed on how to provide for same sex marriage and not on whether it should be permitted at all. There have been claims that the Government is acting without an electoral mandate.

Other respondents, including some other religious organisations and gay rights campaigners, welcomed the proposals and considered that religious organisations which wanted to solemnize same-sex marriage should be allowed to do so. Supporters of the proposals have spoken of extending the right to marry, rather than of redefining marriage.

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, however, to enable those religious organisations that want to conduct same-sex marriages to 'opt-in', without there being any obligation to do so. The Government intends that no religious organisation or its ministers would be forced to conduct marriage ceremonies for same sex couples, and the response document set 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.

Public opinion polls have generally found more support for same sex marriage than opposition to it, although people's attitudes to same sex marriage are sensitive to the form of the question that pollsters use to ask them about it. Young people are more supportive of same sex marriage than older people, and this is true no matter how the question is phrased. There are currently around 6,500 civil partnerships formed each year, compared with around 273,000 mixed sex marriages.

The *Marriage (Same Sex Couples) Bill* would give effect to the Government's proposal to introduce same sex marriage. It would also enable civil partners to convert their civil partnership into a marriage, without imposing any obligation to do so, and would allow transsexual people to change their legal gender without having to end their existing marriage (as they must do at present).

Arguments have also been advanced that civil partnerships should be made available to opposite sex couples but the Government has stated that it has not identified any need to do so.

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

There has been considerable speculation about the effect of the legislation on the teaching of sex and relationships education (SRE) in schools. Some have argued that teachers could be forced to 'promote' same sex marriage and may lose their jobs if they failed to do so – the Minister for Equalities has strongly contested this. The Bill does not propose any amendments to the current legislative provisions on SRE, nor would it make any provisions specifically in respect of teachers.



# 1 Introduction and background

## 1.1 Is there a legal definition of marriage?

In a 2006 case, *Wilkinson v Kitzinger*, Sir Mark Potter, President of the Family Division, spoke of the common law (case law) definition of marriage which derives from an 1866 case:

The common law definition of marriage is that stated by Lord Penzance in *Hyde v Hyde* (1866) LR 1 P&D 130 at 133:

"The voluntary union for life of one man and one woman, to the exclusion of all others."

This definition has been applied and acted upon by the courts ever since... As stated by Lord Nicholls of Birkenhead in *Bellinger v Bellinger* (Lord Chancellor Intervening) [2003] 2 AC 467 at 480 para 46:

"Marriage is an institution, or a relationship, deeply embedded in the religious and social culture of this country. It is deeply embedded as a relationship between two persons of the opposite sex."<sup>1</sup>

A legal textbook includes the following commentary on the definition in *Hyde v Hyde*:

Although often treated as an attempt to define marriage, the context makes it clear that Lord Penzance was only addressing the issue before him: could the English divorce court properly entertain a divorce petition in respect of a marriage which was potentially (albeit not actually) polygamous? The answer to that question was that 'the matrimonial law of this country is adapted to the Christian marriage, and is wholly inapplicable to polygamy' with the result that the parties to such a relationship were 'not entitled to the remedies, the adjudication, or the relief of the matrimonial law of England'. The court did not decide that the 'marriage' had no legal consequences as between the parties, and the courts have subsequently accorded a substantial measure of recognition to such relationships provided that the parties have the legal capacity by their personal law – the law of the domicile- to contract such a marriage...<sup>2</sup>

Another legal textbook considers the definition in *Hyde v Hyde* to be deficient:

According to the definition of marriage proffered in *Hyde v Hyde* ... (and still recited at the start of civil ceremonies), marriage is "the voluntary union for life of one man and one woman to the exclusion of all others". At a time when it is predicted that one in three marriages will end in divorce, this has the quality of an aspiration rather than an accurate description. Furthermore, as a *definition* of marriage, it is deficient in that it fails to identify the central legal difference between married and cohabiting couples, namely that the former have gone through a valid ceremony of marriage and the latter have not. By contrast, s1 of the *Civil Partnership Act 2004* provides, with more precision than passion, that "a civil partnership is a relationship between two people of the same sex... which is formed when they register as civil partners of each other".<sup>3</sup>

The Government has stated that there is no legal definition of religious and civil marriage and that marriage is defined according to where it can take place, rather than being either specifically religious or civil.<sup>4</sup> The Church of England disagrees with this assertion:

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<sup>1</sup> [Wilkinson v Kitzinger \[2006\] EWHC 2022 \(Fam\)](#)

<sup>2</sup> Stephen Cretney, *Family Law in the twentieth century: A history*, 2003, pp68-9, footnote 217

<sup>3</sup> Rebecca Probert, *Cretney's Family Law*, 6th edition, 2006, p27

<sup>4</sup> Government Equalities Office, [Equal civil marriage: a consultation](#), 15 March 2012, p7

The only kind of marriage which English law recognises is one which is essentially the voluntary union for life of one man with one woman to the exclusion of all others. That is the definition of what marriage is. The question of where a marriage is solemnized, or the form or ceremony used, is immaterial to the definition of marriage.<sup>5</sup>

Section 11(c) of the *Matrimonial Causes Act 1973* provides that a marriage celebrated after 31 July 1971 is void if the parties are not respectively male and female.

Section 49 of the *Marriage Act 1949* (the 1949 Act) provides that if any persons “knowingly and wilfully intermarry” otherwise than in accordance with provisions in the Act, the marriage shall be void.

## 1.2 Civil and religious marriage

The 1949 Act does not define marriage as between a man and a woman, but sets out the procedure and premises where a marriage may take place. It provides for:

- civil marriage;
- marriage according to the rites and ceremonies of the Church of England and the Church in Wales;
- marriage according to Jewish and Quaker (the Society of Friends) customs; due mainly to historical reasons, those marrying according to Jewish and Quaker customs are exempt from some of the conditions currently imposed on those marrying according to all other rites (for example, as to the venue);<sup>6</sup>
- marriage according to all other religious rites (eg Catholic, Methodist, Muslim), in buildings that have been registered for the purpose; an authorised person (sometimes a minister of the religious group concerned) may be appointed to register marriages without the presence of the registrar.

Marriages may normally take place at the following venues:

- register office;
- approved premises, such as an hotel;
- a building of the Church of England or the Church in Wales;
- a registered building (that is, a building that has been registered for the purpose of religious marriage, other than a building of the Church of England or Church in Wales);
- naval, military and air force chapels;
- in certain circumstances, marriages can also take place at the residence of someone who is housebound or detained, or of someone who is terminally ill.

The *Places of Worship Registration Act 1855* provides for places of religious worship, except those of the Church of England and the Church in Wales, to be certified by the Registrar General. A building has to be certified as a place of religious worship before it can be

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<sup>5</sup> Church of England, *A Response to the Government Equalities Office Consultation -“Equal Civil Marriage”- from the Church of England*, 11 June 2012. Annex paragraph 16 [accessed 25 January 2013]

<sup>6</sup> *Civil Registration: Delivering Vital Change*, July 2003, paragraphs 3.2.2-3

registered for marriages by the Registrar General under the *Marriage Act 1949*.<sup>7</sup> One year after a building has been registered for the solemnisation of marriages, the trustees or governing body can appoint an “authorised person” to register marriages in the building’s own set of marriage registers. Authorised persons are usually members of the religious community, and may be, for example, the minister or priest.

The Home Office Identity and Passport Service has published a guidance note, [How to certify a building for Religious Worship and register for the Solemnisation of Marriages](#).<sup>8</sup>

There is no need to undergo a separate civil ceremony when the marriage is conducted in a place of worship registered under the 1949 Act. Those who wish to celebrate their marriage in a place of worship that has not been registered for marriage must go through an additional civil ceremony in order to be legally married.

The current position regarding the form of marriage ceremony and the celebrant in England and Wales is set out in a General Register Office Regulatory Reform Order consultation document, *Civil Registration: Delivering Vital Change*, on the reform of the civil registration service in England and Wales:

3.4.62 Currently, there is a distinction between civil and religious marriage ceremonies. Religious marriages can be divided into two categories – marriages according to the rites and ceremonies of the Church of England and the Church in Wales and those according to the rites of other religious bodies. The former can generally only take place in buildings of the Church of England or the Church in Wales [see section 3.7] whereas the latter can generally only take place in registered buildings.

3.4.63 Civil marriages in a register office or approved premise must take place in the presence of a superintendent registrar and a registrar. It is usual for the superintendent registrar to officiate at a marriage ceremony although in law he or she only needs to be present. It is the registrar’s responsibility to ensure that the legal preliminaries to the marriage have been completed correctly and to register the marriage once it has taken place.

3.4.64 The bride and groom must say the words of declaration and contract to each other in English (or Welsh). ...The law precludes any religious elements being used at a civil marriage ceremony – it must be completely secular in nature. Couples can follow their civil ceremony with a religious ceremony or blessing.

(...)

3.4.66 Marriages in registered buildings must take place in the presence of a registrar or an authorised person, whose responsibility it is to ensure the legal preliminaries to the marriage have been completed correctly and to register the marriage once it has taken place. ...

3.4.67 The marriage can take place according to any rites and ceremonies of a religious body that the couple and Minister who is to perform the marriage ceremony agree to use, provided that the consent of the Minister or one of the trustees of the building has been obtained. In addition, in some part of the ceremony, the couple must say words of declaration and contract to each other as specified in the 1949 Act. These words cannot be separated from the ceremony and must form an integral part of it. Marriages according to the usages of the Jews and Quakers are not subject to this requirement to use prescribed words of declaration and contract.

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<sup>7</sup> [HC Deb 17 December 2008 c862W](#)

<sup>8</sup> Home Office website, accessed 16 January 2013

3.4.68 Authorised Persons are usually members of the religious community, (sometimes the minister or priest who is to perform the marriage ceremony), appointed by the trustees of the building to carry out the functions of the registrar. Authorised Persons can only be appointed one year after the building has been registered for marriages, so for the first year, a registrar must be present at the solemnisation of all marriages that take place there.<sup>9</sup>

### 1.3 Marriage in the Church of England

The Church of England is the established church and its Canons (church laws) form part of the law of the land.

#### ***Right to marry***

Clergy of the Church of England are under a common law duty to marry a parishioner in their parish church or in the church of a parish with which they have a qualifying connection. However, in some circumstances, members of the clergy may refuse to solemnize a marriage; for example, they may refuse to marry any person whose former marriage has been dissolved if the former spouse is still living;<sup>10</sup> or any person whose gender reassignment has been legally recognised under the *Gender Recognition Act 2004*.<sup>11</sup>

#### ***Canon law***

There are broadly two types of Church of England law, Canons and Measures. Measures involve Parliamentary approval, Canons do not.

The Church of England defines the Canons Ecclesiastical, which are a form of Church of England legislation, as “a form of primary legislation whose application is specific to the Church of England and which may be made and promulgated by the General Synod only with the Royal Assent and Licence”.<sup>12</sup>

The Church of England can amend or repeal primary legislation on matters concerning the Church of England through a Measure passed by its Synod, provided the Measure is subsequently approved by both Houses of Parliament and receives Royal Assent.<sup>13</sup> Section 3 (6) of the *Church of England Assembly (Powers) Act 1919* provides this power in the following terms:

A measure may relate to any matter concerning the Church of England, and may extend to the amendment or repeal in whole or in part of any Act of Parliament, including this Act:

Provided that a measure shall not make any alteration in the composition or powers or duties of the Ecclesiastical Committee, or in the procedure in Parliament prescribed by section four of this Act.

Under the *Submission of the Clergy Act 1533*, Canon law cannot be contrary to general law.

[Canon B30](#) sets out the Church of England’s general teaching on marriage. It refers specifically to marriage between a man and a woman:

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<sup>9</sup> 2003

<sup>10</sup> *Matrimonial Causes Act 1965*, section 8(2)

<sup>11</sup> *Marriage Act 1949*, section 5B. See also J Masson, R Bailey-Harris and R Probert (eds), *Cretney, Principles of Family Law*, 8th edition, 2008, p32

<sup>12</sup> Church of England website, [Church of England Legislation](#) [accessed 25 January 2013]

<sup>13</sup> [Bill 126-EN](#) paragraph 5

1. 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, for the procreation and nurture of children, for the hallowing and right direction of the natural instincts and affections, and for the mutual society, help and comfort which the one ought to have of the other, both in prosperity and adversity...<sup>14</sup>

Canons B31 to 33 deal with impediments (which limit the right to marry in a parish church).

In July 2002, the General Synod affirmed, in accordance with the doctrine of the Church of England as set out in Canon B30, that marriage should always be undertaken as a "solemn, public and life-long covenant between a man and a woman".<sup>15</sup> In November 2002, the House of Bishops issued [advice to clergy](#) in respect of further marriage in church after divorce. It reiterated the general principal applying to marriage:

1.1 Marriage is created by God to be a lifelong relationship between a man and woman. The church expects all couples seeking marriage to intend to live together 'for better for worse ... till death us do part'. It is not, then, a light matter to solemnize a marriage in which one partner has a previous partner still living. It is important that the decision you take as to whether to solemnize such a marriage should be on the basis of clear principles that are consistent with the church's teaching.<sup>16</sup>

#### 1.4 Marriage in accordance with the rites of other religious organisations

The Church in Wales also has a common law duty to marry parishioners in their parish church by virtue of it being previously established (it became disestablished in 1920).<sup>17</sup>

Other religious bodies do not have a legal duty to marry parishioners and their religious law is not part of the law of the land.<sup>18</sup> Different religions have their own rules about who is eligible to marry in accordance with their rites.

A legal opinion of Karon Monaghan QC, obtained by the human rights group, Liberty, provides information about religious organisations which are permitted under the *Marriage Act 1949* to solemnize marriages which "discriminate on religious grounds". The opinion sets out information about the way in which Orthodox Jews, the Roman Catholic Church and Quakers restrict access to marriage on grounds of religion and about how the Roman Catholic Church and the Church of England restrict marriages so as to exclude those who have been divorced. Karon Monaghan does not consider this to be unlawful:

18. The religious prohibitions on the marrying of those who have been divorced will not be unlawful under the Equality Act 2010 since there is no protection provided for couples seeking to marry in such circumstances. The (very limited) protection against discrimination connected to marriage and civil partnership under the Equality Act 2010 applies only to those who are presently married or civilly partnered (s8, Equality Act 2010), not those who have been. In any event such protection as there is against

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<sup>14</sup> Church of England website, [Section B Divine service and the administration of the sacraments](#), [accessed 25 January 2013]

<sup>15</sup> Church of England, [Marriage in Church after Divorce](#), November 2002 [accessed 26 January 2013]

<sup>16</sup> Church of England website, [Supplementary material, Advice to clergy concerning marriage and the divorced](#), [accessed 26 January 2013]

<sup>17</sup> [Bill 126-EN paragraph 5](#)

<sup>18</sup> [HL Deb 16 January 2013 c136WA](#)

marriage and civil partnership discrimination does not extend to any of the activities caught by the Equality Act 2010 that might involve marriage.<sup>19</sup>

### 1.5 What is the legal definition of civil partnership?

The *Civil Partnership Act 2004* (CPA 2004) creates a legal union which is very similar, but not fully identical, to marriage.

Section 1 of the CPA 2004 defines civil partnership as a relationship between two people of the same sex (“civil partners”) which is formed when they register as civil partners of each other in England or Wales, Scotland, Northern Ireland, or outside the United Kingdom under an Order in Council (registration at British consulates etc. or by armed forces personnel); or which they are treated as having formed by virtue of having registered an overseas relationship.

A civil partnership ends only on death, dissolution or annulment.<sup>20</sup>

### 1.6 How does civil partnership differ from 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>21</sup> whereas a civil partnership is available only to same sex couples.<sup>22</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 (although civil partnerships can sometimes be registered on religious premises);<sup>23</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 factor 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;
- there are some differences around eligibility for some pension rights.<sup>24</sup>

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

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<sup>19</sup> Liberty, *Liberty's submission to the Government Equalities Office consultation on Equal Civil Marriage*, June 2012, pp32-4, footnote omitted [accessed 30 January 2013]

<sup>20</sup> *Civil Partnership Act 2004*, section 1(3)

<sup>21</sup> *Matrimonial Causes Act 1973*, section 11(c)

<sup>22</sup> *Civil Partnership Act 2004*, section 3(1)(a)

<sup>23</sup> Part 1.9 of this paper provides information about civil partnership registration in religious buildings

<sup>24</sup> See House of Commons Library Standard Note SN 3035 *Pensions: civil partnerships and same sex marriages*

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>25</sup> It has also commented on what it calls the “myth” that there is no difference between civil partnership and marriage:

REALITY: There are some small legal differences between civil partnerships and marriage. But for many people there are important differences in the perception of and responsibilities associated with these separate institutions.<sup>26</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.

### 1.7 Consideration by Courts of whether same sex marriage should be permitted

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 (ECHR). Where it is not possible to interpret an Act in compliance with the ECHR, 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.

Arguments have been advanced that, based on perceived rights under human rights legislation, same sex couples should be able to marry.

In a 2006 case, the Family Division of the High Court held that the withholding from same sex partners of the actual title and status of marriage did not constitute a breach of their rights under the ECHR.

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 (the right to respect for private and family life), 12 (right to marry) and 14 (that there should be no discrimination in the rights granted by the state) of the ECHR; 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:

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

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<sup>25</sup> Government Equalities Office, *Equal civil marriage: a consultation*, 15 March 2012, p5

<sup>26</sup> Department for Culture Media and Sport, *Myths about Equal Marriage – Setting Out the Truth* [accessed 29 January 2013]

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>27</sup>

More recently, in June 2010, in a case brought by two Austrians, the European Court of Human Rights ruled that there was no obligation under Article 12 of the ECHR for States to recognise same sex marriage.<sup>28</sup> 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>29</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

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<sup>27</sup> [Wilkinson v Kitzinger](#) [2006], EWHC 222 (Fam), [2007] 1FLR 295

<sup>28</sup> Case of [Schalk and Kopf v Austria](#) [2010] ECHR 995 (24 June 2010) (Application No. 30141/04) [accessed 26 January 2013]

<sup>29</sup> *Ibid* paragraph 62



marriage between a man and a woman, and that the status of marriage is for Member States to decide.

### 1.8 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>30</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>31</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>32</sup>

The Government has stated that it has not identified any need to open up civil partnerships to opposite sex couples.<sup>33</sup> It has also stated that responses to the consultation on equal civil marriage (discussed below) had not made clear what detriment opposite sex couples suffered by not having access to civil partnerships:

7.8 When civil partnerships were introduced in 2005, they were created to allow equivalent access to rights, responsibilities and protections for same-sex couples to those afforded by marriage. They were not intended or designed as an alternative to marriage. Therefore, we do not believe that they should now be seen as an alternative to marriage for opposite sex couples.

7.9 Opposite sex couples currently have access to marriage, either via a civil or religious ceremony, which is both legally and socially recognised. We understand that not all opposite sex couples wish to marry, but that decision is theirs to make and they have the option to do so if they wish.<sup>34</sup>

The *Marriage (Same Sex Couples) Bill* would not enable opposite sex couples to register a civil partnership.

### 1.9 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, where religious organisations permit this, and the premises

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<sup>30</sup> Women and Equality Unit, *Civil Partnership – A framework for the legal recognition of same-sex couples*, June 2003

<sup>31</sup> See, for example, "[Heterosexual couple begin legal fight after being refused civil partnership](#)", *Guardian*, 24 November 2009 [accessed 25 January 2013]

<sup>32</sup> See, for example, "[Gay wedding ban in church may be lifted](#)", *Guardian*, 13 February 2011, see also the [Equal Love campaign](#) website [accessed 25 January 2013]

<sup>33</sup> Government Equalities Office, *Equal civil marriage: a consultation*, 15 March 2012, p12

<sup>34</sup> HM Government, *Equal marriage: The Government's response*, December 2012, p26

have been approved for the purpose, but religious services cannot be used while this is being done.<sup>35</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 House of Commons Library standard note, [Civil partnerships on religious premises](#) provides further information.<sup>36</sup>

### 1.10 Human rights and freedom of religion

Article 9 of the European Convention on Human Rights (ECHR) provides that:

(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice or observance.

(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are 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.

Section 13 of the *Human Rights Act 1998* provides that:

(1) If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right of freedom of thought, conscience or religion, it must have particular regard to the importance of that right.

(2) In this section 'court' includes a tribunal.

The courts have doubted whether the enactment of section 13 of the 1998 Act meant that the courts should give greater weight to rights under Article 9 than applicants would otherwise enjoy under the Convention.<sup>37</sup> In many cases, it may well be that there are important, counterbalancing arguments which justify a restriction on claimants' manifestations of

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<sup>35</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>36</sup> SN/HA/6510, last updated 18 December 2012

<sup>37</sup> See, for example, *R (Amicus) v Secretary of State for Trade and Industry* [2004] EWHC 860 (Admin) [2004] IRLR 430 at [41] and Samantha Knights, *Freedom of Religion, Minorities and the Law* (Oxford, 2007), paras 2.38–2.39.

religious belief. Alternatively, the perceived “rights” may well clash with those of another group within society.<sup>38</sup>

The human rights group Liberty considers that the effect of these two provisions is “a robust protection for an important tenet of the British tradition of liberty” and that the role of the State under this right “is simply to encourage religious tolerance”,<sup>39</sup> although others have doubted the effect of the provisions.

The Government has stated, in connection with its proposal to introduce same sex marriage, that the European Court of Human Rights “would be bound to give priority to the rights of a religious organisation under Article 9 of the European Convention on Human Rights, which guarantees the right to freedom of religion”.<sup>40</sup>

### **Recent cases**

#### *The Facebook case*

The issue of freedom of expression and religion in relation to same sex marriage was considered by the High Court in [Smith v Trafford Housing Trust \[2012\]](#).<sup>41</sup> In that case Mr Smith, a practising Christian and occasional lay preacher, read an article on the *BBC News* website headed “Gay church ‘marriages’ set to get the go-ahead”. He posted a link to the article on his Facebook page, accompanied by the comment “an equality too far”. When this was replied to on Facebook, Mr Smith commented again, justifying his view by reference to his religious beliefs.<sup>42</sup> After complaints from colleagues, Mr Smith was informed by his employer (Trafford Housing Trust) that he had been found guilty of gross misconduct, and was consequently demoted. The Trust based this demotion on a purported breach by Mr Smith of their Code of Conduct and/or Equal Opportunities policy.

The Court found that Mr Smith’s demotion constituted a breach of his contract of employment, as his comment did not contravene the Trust’s policies. Importantly, the Court found that the impression to be gained from Mr Smith’s Facebook page was “that it was a medium for personal or social, rather than work related, information and views”<sup>43</sup> and that “...no reasonable reader of Mr Smith’s Facebook wall page could rationally conclude that his two postings...were made in any relevant sense on the Trust’s behalf”.<sup>44</sup>

The fact that Mr Smith’s views were aired in a social setting was relevant to the possibility that they contravened the Trust’s policies. In the Court’s judgment, the rights to freedom of religion and freedom of speech under Articles 9 and 10 of the [European Convention on Human Rights](#), worked to restrict the scope of the Trust’s policies:

The right of individuals to freedom of expression and freedom of belief, taken together, means that they are in general entitled to promote their religious or political beliefs, providing they do so lawfully. Of course, an employer may legitimately restrict or prohibit such activities at work, or in a work related context, but it would be prima facie

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<sup>38</sup> See, for example, Horne, A. ‘Focus on Article 9: Religious Rights in an Increasingly Secular Society’ [2008] *Judicial Review* 101

<sup>39</sup> Liberty, [Liberty’s submission to the Government Equalities Office consultation on Equal Civil Marriage](#), June 2012, p19 [accessed 30 January 2013]

<sup>40</sup> Department for Culture Media and Sport, [Myths about Equal Marriage – Setting Out the Truth](#), (under the heading “MYTH: The European Court of Human Rights will force religious organisations to conduct same sex marriages” [accessed 29 January 2013])

<sup>41</sup> EWHC 3221 (Ch)

<sup>42</sup> Para 4

<sup>43</sup> Para 57

<sup>44</sup> Ibid

surprising to find that an employer had, by the incorporation of a code of conduct into the employee's contract, extended that prohibition to his personal or social life.<sup>45</sup>

The ruling in *Smith* will be relevant to future cases where employees express views outside of the workplace, as it indicates the courts will seek to restrict the scope of workplace policies where these may engage employees' rights to freedom of religion and freedom of speech. Notwithstanding the ruling in Mr Smith's favour, the Court was limited in respect of the remedy it could afford him, as he had not brought his claim within the strict time limits applicable to unfair dismissal claims. Mr Smith was awarded £98 in damages. Mr Justice Briggs concluded:

I must admit to real disquiet about the financial outcome of this case. Mr Smith was taken to task for doing nothing wrong, suspended and subjected to a disciplinary procedure which wrongly found him guilty of gross misconduct, and then demoted to a non-managerial post with an eventual 40 per cent reduction in salary. The breach of contract which the Trust thereby committed was serious and repudiatory. A conclusion that his damages are limited to less than £100 leaves the uncomfortable feeling that justice has not been done to him in the circumstances.<sup>46</sup>

A 10 Minute Rule Bill was introduced by Edward Leigh MP on 29 January 2013 with the aim protecting individuals in Mr Smith's situation. The Bill would "insert in the *Equality Act 2010* protection for a person's conscientious views on the definition of marriage".<sup>47</sup>

#### *Eweida and Others*

In *Eweida and Others v the United Kingdom [2013]*<sup>48</sup> the European Court of Human Rights considered whether UK law adequately protected the applicants' right to manifest their religion, as enshrined in Article 9 of the European Convention on Human Rights. The case is discussed in a House of Commons Library standard note, *Religious discrimination in the workplace: the case of Eweida and Others v the United Kingdom*.<sup>49</sup>

The main principle to emerge from the case is that the right of an employee to resign will not in future constitute adequate protection of the employee's freedom of religion. Prior to *Eweida and Others* European jurisprudence provided that the freedom to resign protected Article 9 rights; the Court abandoned this position, as it recognised that notional freedom to resign does not reflect the economic reality that, in many cases, employees are not free to leave paid employment. In future cases of religious discrimination, courts will be required to balance the right to manifest one's religion against legitimate workplace requirements.

One of the applicants in *Eweida and Others* was Lillian Ladele, a registrar of births, deaths and marriages for the London Borough of Islington. She viewed same-sex civil partnerships as contrary to God's law and refused to officiate at civil partnerships. At a disciplinary hearing on 16 August 2007 the council asked Ms Ladele to sign a new job description requiring her to conduct work in connection with civil partnerships; she promptly issued legal proceedings, complaining of direct and indirect discrimination and harassment. The UK courts found that she had not been discriminated against, as the council had legitimately prevented her from manifesting her religion in the workplace in order to protect others from discrimination.

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<sup>45</sup> Para 66

<sup>46</sup> Para 106

<sup>47</sup> [HC Deb 29 January 2013 c800](#)

<sup>48</sup> ECHR 37

<sup>49</sup> SN06533, last updated 24 January 2013

Ms Ladele argued in the European Court that the council's requirement that she officiate at civil partnerships violated her freedom of religion. The Court took the view that in circumstances where there are competing rights at play – here, the Article 9 rights of Ms Ladele weighed against the rights of same sex couples not to be discriminated against – national authorities are best placed to strike the balance. Thus, the Court upheld the judgment of the domestic courts. The significance of the case for future claims of religious discrimination is that Article 9 may afford little assistance to workers who seek to manifest their religious freedom in the workplace where to do so could discriminate against others.<sup>50</sup>

### 1.11 Conservative Party's contract for equalities

On 3 May 2010, Theresa May, who was then Shadow Minister for Women and Equality, launched the [Conservative Party's Contract for Equalities](#), which set out what the Conservatives planned to do in Government:

In this election campaign we have talked about the new part we hope people will play in making the country better, in building the Big Society. Now, at the end of the campaign, we are setting out our side of the bargain: what we will do if we win the election. So we are publishing this contract for equalities, which underscores some of the most important battles in politics – on gender equality, racial equality, ending age discrimination, LGBT [lesbian, gay, bisexual, and transgender] issues and helping disabled people. And we are saying clearly in this contract that if we fail to make progress in these areas, if we do not deliver on our side of the bargain, then vote us out in five years time.

This contract for equalities will be central to what we plan to do in government.

This document states: "We will also consider the case for changing the law to allow civil partnerships to be called and classified as marriage".<sup>51</sup>

### 1.12 Current provisions on Sex and Relationship Education (SRE) in schools in England and Wales

The Department for Education's [Guide to the Law for School Governors](#) outlines the current arrangements relating to sex and relationship education (SRE) in local authority maintained schools in England.

33. Governing bodies and head teachers of maintained schools providing primary education must decide whether sex and relationship education (SRE), beyond that set out in the statutory national curriculum for science, should be included in their school's curriculum and, if so, what it should consist of and how it should be organised. They must keep a written record of their decisions. Schools should consult parents about their SRE programmes.

34. All maintained schools providing secondary education must provide sex education (including education about HIV and AIDS and other sexually-transmitted diseases). All maintained schools must teach human growth and reproduction as set out in the statutory national curriculum for science.

35. All governing bodies must have a written statement of whatever policy they adopt on sex education and make it available to parents. The LA, governing body and head teacher should also make sure that any SRE is embedded in Personal, Social, Health and Economic (PSHE) education to ensure that pupils consider the moral aspects of sex education and are encouraged to develop loving and caring relationships.

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<sup>50</sup> See particularly: [McFarlane v Relate Avon Ltd \[2010\] EWCA Civ 880 \(29 April 2010\)](#), para 21-25

<sup>51</sup> Conservative Party, [A Contract for Equalities](#), p14 [accessed 28 January 2013]

36. Parents have the right to withdraw their children from all or part of any sex education provided (but not from the biological aspects of human growth and reproduction necessary under the national curriculum for science).

37. Head teachers and governors are required to take reasonable steps to secure that where sex education is given it is given in such a way as to encourage pupils to have regard to moral considerations and the value of family life. In exercising this function, head teachers and governors must have regard to the statutory guidance (see the Guidance section for more information).<sup>52</sup>

A House of Commons Library Standard Note on Sex and Relationship Education in Schools, [SN/SP/6103](#), provides additional background.<sup>53</sup>

In accordance with Section 403 of the *Education Act 1996* (as amended), maintained schools are required to ensure that SRE includes teaching on moral principles and the value of family life, and to have regard to guidance issued by the Secretary of State (or in Wales, Welsh Ministers). Statutory guidance for England is contained in [Sex and Relationship Education Guidance](#), last amended by the then DfEE in July 2000.<sup>54</sup>

In Wales, maintained primary schools are required to provide SRE as contained in the National Curriculum for Wales – e.g., as part of science, but do not have to provide it as part of the basic curriculum. All maintained secondary schools are required to provide SRE as part of the basic curriculum and as contained in the National Curriculum for Wales. – e.g., in science. The relevant guidance document for Wales is the Welsh Assembly Government's [Sex and relationship education in schools](#).<sup>55</sup>

Academies do not have to follow the National Curriculum. However, each academy must act in accordance with its individual funding agreement. A current model funding agreement for academies requires the school to have regard to the guidance.<sup>56</sup>

The [Sex and Relationship Education Guidance](#) (England) places emphasis on the importance of marriage:

Within the context of talking about relationships, children should be taught about the nature of marriage and its importance for family life and for bringing up children. The Government recognises that there are strong and mutually supportive relationships outside marriage. Therefore, children should learn the significance of marriage and stable relationships as key building blocks of community and society.<sup>57</sup>

Paragraphs 1.30 and 1.32 of this guidance make clear that teachers should be able to deal honestly and sensitively with sexual orientation, answer appropriate questions and offer support. On the issue of personal, moral or religious convictions of teachers, paragraph 2.1 notes:

2.1 Parents and pupils may need to be reassured that the personal beliefs and attitudes of teachers will not influence the teaching of sex and relationship education within the PSHE framework. Teachers and all those contributing to sex and relationship education are expected to work within an agreed values framework as described in the school's policy, which must be in line with current legislation. Some

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<sup>52</sup> Department for Education's [Guide to the Law for School Governors](#), May 2012, Chapter 7

<sup>53</sup> SN/SP/6103, last updated 31 October 2011

<sup>54</sup> DfEE, [Sex and Relationship Education Guidance](#), (July 2000) DfEE 0116/2000.

<sup>55</sup> Welsh Assembly Government, [Sex and relationship education in schools](#), September 2010.

<sup>56</sup> For example, see the [single academy model for mainstream schools](#), paragraph 28

<sup>57</sup> *Ibid*, pp 11

teachers may need support and training to deliver the programme sensitively and effectively.<sup>58</sup>

In July 2011, the Government announced an internal review of PSHE but at the time of writing (25 January 2013), a report of the review has not yet been published.

## 2 Same sex marriage statistics

### 2.1 Public opinion on same-sex marriage

Table 1 summarises recent opinion polls on same sex marriage carried out in Great Britain by organisations that are members of the British Polling Council.<sup>59</sup>

**Table 1: Summary of recent polls on same sex marriage in Great Britain**<sup>1 2</sup>

Date	Polling company	Comissioned by	Results			Largest response
			Support	Oppose	Don't know	
19-Dec-12	ICM	Guardian	62%	31%	7%	Support
14-Dec-12	Survation	Mail on Sunday	60%	40%	0%	Support
09-Dec-12	YouGov	-	55%	36%	9%	Support
08-Dec-12	IpsosMORI	Freedom to Marry	73%	24%	3%	Support
14-Nov-12	ComRes	Coalition for Marriage	28%	62%	10%	Oppose
22-Aug-12	Angus Reid	-	46%	47%	7%	Oppose
10-May-12	YouGov	Sunday Times	51%	35%	14%	Support
09-Mar-12	Populus	-	65%	27%	8%	Support
08-Mar-12	YouGov	Sunday Times	43%	47%	10%	Oppose
07-Mar-12	ICM	Sunday Telegraph	45%	36%	19%	Support
23-Feb-12	ComRes	Catholic Voices	22%	70%	9%	Oppose
06-Jan-12	ComRes	Coalition for Marriage <sup>3</sup>	34%	51%	14%	Oppose
25-Nov-11	YouGov	Stonew all <sup>4</sup>	71%	28%	-	Support
12-Oct-11	ComRes	loS/Sunday Mirror	51%	34%	16%	Support
20-Sep-11	YouGov	-	46%	45%	9%	Support
14-Jul-11	Angus Reid	-	43%	49%	7%	Oppose

Notes: 1. The date is the first day on which polling was conducted. Most polls are produced over two to three days. 2. Unless otherwise stated, polls are of adults aged 18+ in Great Britain. 3. England only. 4. "Don't know" answers not counted.

Source: Various (see footnote)<sup>60</sup>

There is considerable variation in the results of polls on same sex marriage. Of the sixteen polls listed in the table, ten found greater support than opposition for same sex marriage, while six found greater opposition than support. Eight polls found a majority of respondents in favour of same sex marriage, while three polls found a majority opposed. Two polls found more than 70% of respondents in favour of same sex marriage, while one poll found 70% of respondents opposed.

<sup>58</sup> DfEE, *Sex and Relationship Education Guidance*, July 2000, DfEE 0116/2000, pp 14

<sup>59</sup> The table is intended to be as representative as possible. No polls have been knowingly omitted. However, some polls may not have been discovered. All polls were conducted by organisations that are members of the British Polling Council.

<sup>60</sup> Angus Reid 14-Jul-11, YouGov 20-Sep-11, ComRes 12-Oct-11, YouGov 25-Nov-11, ComRes 06-Jan-12, ComRes 23-Feb-12, ICM 07-Mar-12, YouGov 08-Mar-12, Populus 09-Mar-12, YouGov 10-May-12, Angus Reid 22-Aug-12, ComRes 14-Nov-12, IpsosMORI 08-Dec-12, YouGov 09-Dec-12, Survation 14-Dec-12, ICM 19-Dec-12.

The variation in the results may be explained by differences in the questions that are used to test public opinion on same sex marriage. Polls commissioned by organisations campaigning for and against same sex marriage produced some of the strongest responses both for and against the proposal. This reflects the fact that respondents are sensitive to the form of the question they are asked about same sex marriage, and campaigning organisations tend to choose questions that are more likely to elicit a response that supports their position. Questions of the form “Do you agree that ...” can skew the results of a poll towards the statement that is offered, especially when the statement does not directly reflect the policy in question or presents a reason for respondents to agree with it.

For example, the ComRes poll commissioned by the Coalition for Marriage in January 2012 asked respondents whether they agreed with the statement: “Since gay and lesbian couples already have the same rights as married couples available to them under civil partnership, they should not be allowed to redefine marriage for everyone else.” Subsequent ComRes polls for both Catholic Voices and the Coalition for Marriage asked whether respondents agreed with the statement: “Marriage should continue to be defined as a life-long exclusive commitment between a man and a woman”; which does not directly ask the respondent whether they support or oppose the Government’s proposals.

Similarly, the YouGov Poll commissioned by Stonewall in November 2011 asked respondents whether they supported the fact that: “The Government intends to extend the legal form and name of civil marriage to same sex couples.” This question refers to “civil marriage” rather than same sex or gay marriage, and describes the policy as to “extend the legal form and name” of marriage to same sex couples rather than to introduce same sex marriages. And the Populus poll of March 2011 asked respondents whether they agreed that: “Gay couples should have an equal right to get married, not just have civil partnerships”. The appeal to equal rights might be taken as a reason to agree with the statement.

Polls that simply asked whether the Government should or should not introduce same sex marriage found more people in favour. These polls are summarised in Table 2.

**Table 2: Summary of polls on same sex marriage offering a two-way choice**

Date	Polling company	Comissioned by	Results		
			Support	Oppose	Don't know
19-Dec-12	ICM	Guardian	62%	31%	7%
14-Dec-12	Survation	Mail on Sunday	60%	40%	0%
09-Dec-12	YouGov	-	55%	36%	9%
10-May-12	YouGov	Sunday Times	51%	35%	14%
07-Mar-12	ICM	Sunday Telegraph	45%	36%	19%
12-Oct-11	ComRes	IoS/Sunday Mirror	51%	34%	16%

Sources: Various (see footnote)<sup>61</sup>

However, a different response pattern was found in polls that offered a three-way choice between same sex marriage, civil partnerships without same sex marriage, and neither civil partnerships nor same sex marriage. Table 1 includes these polls with the response categories aggregated into support and opposition for the policy. Table 3 shows the full breakdown of responses for polls of this type.

<sup>61</sup> ComRes [12-Oct-2011](#), ICM [07-Mar-2012](#), YouGov [10-May-12](#) , YouGov [09-Dec-12](#), Survation [14-Dec-12](#), ICM [19-Dec-12](#).



As the table shows, when the question is asked in this way, support for same sex marriage is the largest individual response category, but when the responses in the categories opposed to same sex marriage are combined, they are larger in three of the four polls. This suggests that some of the people who express support for same sex marriage in polls that present a binary choice for or against same sex marriage may be content with just civil partnerships.

**Table 3: Summary of polls on same sex marriage offering a three-way choice**

Date	Polling company	Comissioned by	Results			
			Support same-sex marriage	Support civil partnership	Oppose both	Don't know
22-Aug-12	Angus Reid	-	46%	33%	14%	7%
08-Mar-12	YouGov	Sunday Times	43%	32%	15%	10%
20-Sep-11	YouGov	-	46%	28%	17%	9%
14-Jul-11	Angus Reid	-	43%	34%	15%	7%

Sources: Various (see footnote)<sup>62</sup>

The most consistent result in the polling data is the relationship between age and attitudes to same sex marriage. Younger people are more likely to support same sex marriage and older people are more likely to oppose it. This result holds across all polls although the exact level of support found in any given age-group varies with the form of the question used in the poll. Table 4 shows public opinion on same sex marriage in each age-group from the most recent poll offering a simple two-way choice on the policy.

**Table 4: Support for and opposition to same sex marriage by age, ICM 19 Dec 2012**

	Age				
	All	18-24	25-34	35-64	65+
Support	62%	77%	75%	64%	37%
Oppose	31%	19%	17%	27%	58%
Don't know	7%	5%	7%	9%	5%

Source: [ICM 19 Dec 2012](#)

Beyond polling data, there are two large petitions on same sex marriage being run by campaigns for and against the Government proposal. At the time of writing, the [Coalition for Marriage](#) petition opposing same sex marriage had around 630,000 signatures, while the [Coalition for Equal Marriage](#) petition had around 65,000 signatures. Unlike opinion polls, petitions are self-selecting and do not represent the balance of opinion among the whole population.

## 2.2 Number of civil partnerships

Between their introduction in 2005 and the end of 2011, there were 53,417 civil partnerships formed in the UK. During the same period, 1,768 civil partnerships were dissolved.

<sup>62</sup> Angus Reid [14-Jul-11](#), YouGov [20-Sep-11](#), YouGov [08-Mar-12](#), Angus Reid [22-Aug-12](#).

Table 5 shows the number of civil partnership formations and dissolutions in each year. After an initial surge in the number of civil partnerships during the year following their introduction, the number has settled down to an average of around 6,500 a year. This compares with an average 273,000 mixed sex marriages a year and an average 132,000 divorces.

**Table 5: Number of civil partnership formations and dissolutions, UK, 2005-11**

	Civil partnership formations	Civil partnership dissolutions
2005 <sup>1</sup>	1,953	0
2006	16,106	0
2007	8,728	41
2008	7,169	180
2009	6,281	353
2010	6,385	522
2011	6,795	672

Notes: 1. Civil partnerships did not begin until the final quarter of 2005.

Source: ONS, [Vital Statistics: Population and Health Reference Tables, Winter 2012 Update](#)

### 2.3 Potential demand for same sex marriage

According to the most recent results from the Office for National Statistics (ONS) Integrated Household Survey, around 1% of adults aged 16 and older identified themselves as gay or lesbian, and 0.5% of adults identified themselves as bisexual. A further 3.6% of adults stated that they “Don’t Know” their sexual identity or refused the question, 0.7% provided “No response” to the question, and 0.4% gave their sexual identity as “Other”. <sup>63</sup>

This means that around 1.5% of the adult population identify themselves as either gay or bisexual, which is equivalent to around 770,000 people. Alternatively, a combined 6.2% of the adult population does not identify themselves as heterosexual or straight, which is equivalent to around 3.2 million people.

### 2.4 International comparisons

Table 6 shows the number of same sex marriages in each year from 2001 to 2011 in countries that have introduced same sex marriage and where statistics are available. Table 7 shows the number of mixed sex marriages in the same countries. As the tables show, the number of same sex marriages is small compared with the number of mixed sex marriages.

**Table 6: same sex marriages by country, 2001-2011**

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Netherlands	2,414	1,838	1,499	1,210	1,150	1,212	1,371	1,408	1,358	1,354	1,355
Belgium	-	-	854	1,069	1,027	1,124	1,150	1,092	1,066	1,082	N/A
Spain	-	-	-	-	1,275	4,574	3,250	3,549	3,412	3,583	3,540
South Africa	-	-	-	-	-	-	80	732	760	888	867
Norway	-	-	-	-	-	-	-	-	-	271	269
Portugal	-	-	-	-	-	-	-	-	-	266	224
Iceland	-	-	-	-	-	-	-	-	-	-	18

Source: Eurostat, National Statistics Agencies

<sup>63</sup> ONS, [Integrated Household Survey April 2010 to March 2011](#)

**Table 7: mixed sex marriages by country, 2001-2011**

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Netherlands	79,677	83,970	78,928	72,231	71,113	71,157	71,114	74,030	72,119	74,045	71,572
Belgium	42,110	40,434	41,777	43,296	43,141	44,813	45,561	45,613	43,303	42,159	N/A
Spain	208,057	211,522	212,300	216,149	208,146	203,453	201,579	194,022	174,062	167,247	161,724
South Africa	134,581	177,202	178,689	176,521	180,657	184,860	183,030	186,522	171,989	170,826	167,264
Norway	19,722	20,364	22,361	18,655	22,392	21,721	23,471	25,125	24,299	23,313	22,866
Portugal	58,390	56,457	53,735	49,178	48,671	47,857	46,329	43,228	40,391	39,993	35,711
Iceland	1,484	1,652	1,532	1,515	1,659	1,752	1,797	1,704	1,546	1,580	1,458

Notes: Countries that have introduced same-sex marriage are Argentina, Belgium, Canada, Iceland, Mexico (Mexico City), Netherlands, Norway, Portugal, South Africa, Spain, Sweden, USA (some states). Only those countries that have introduced same sex marriage for the whole country and that publish annual statistics on both mixed and same sex marriages are included.

Source: Eurostat, National Statistics Agencies

### 3 Equal civil marriage consultation

#### 3.1 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>64</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>65</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>66</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>67</sup>

#### 3.2 The Government's consultation paper

On 15 March 2012, the Government Equalities Office launched [Equal civil marriage: a consultation](#).<sup>68</sup> In a written ministerial statement on the same day, Lynne Featherstone said

<sup>64</sup> [Speech in full - Lynne Featherstone](#), *Dods Politics Home*, 17 September 2011 [accessed 25 January 2013]

<sup>65</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 25 January 2013]

<sup>66</sup> Conservatives website, [David Cameron: Leadership for a better Britain](#), 5 October 2011, [accessed 25 January 2013]

<sup>67</sup> ["Prime Minister's speech at Lesbian, Gay, Bisexual and Transgender reception"](#), 31 July 2012 [accessed 25 January 2013]

<sup>68</sup> Government Equalities Office, [Equal civil marriage: a consultation](#), 15 March 2012

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, at that time, 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>69</sup>

In the Ministerial Foreword, Lynne Featherstone and Theresa May, Home Secretary and at that time Minister for Women and Equalities, said that the consultation was not about “Government interfering in people’s lives” but that it was about providing choice in a modern society: “Quite simply, if commitment and marriage is a good thing we should not restrict civil marriage only to opposite sex couples”.<sup>70</sup>

The consultation dealt with civil marriage (in a register office or on approved premises, such as an 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 enable same sex couples to have a civil marriage; to make no changes to how religious organisations solemnize marriages; and to allow transsexual people to change their legal gender without having legally to 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>71</sup>

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

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<sup>69</sup> [HC Deb 15 March 2012 cc37-8WS](#)

<sup>70</sup> Government Equalities Office, *Equal civil marriage: a consultation*, 15 March 2012, p1

<sup>71</sup> *Ibid* p4

### **Civil marriage**

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 “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>72</sup>

The Consultation Paper set out the Government’s commitment 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>73</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>74</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 organisation opted on a voluntary basis to offer such services and retaining the ban on any religious elements forming part of the registration).<sup>75</sup> Same sex couples of faith 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>76</sup>

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<sup>72</sup> *Ibid* p8

<sup>73</sup> *Ibid* p9

<sup>74</sup> *Ibid* p10

<sup>75</sup> *Ibid* p5

<sup>76</sup> *Ibid* p13

Civil partners would have the option of converting their civil partnership into a civil marriage should they wish to do so.<sup>77</sup>

### ***Gender recognition***

The Government proposed that married transsexual people would not have to end their marriage in order legally to gain recognition in their acquired gender (as they do at present). It said that the current position could cause distress to the small number of people affected:

Whilst this will affect a small number of people, for both transsexual people and their spouses who wish to remain in their legal relationship, this situation understandably can cause a great deal of distress particularly for those who wish to remain in their existing marriage or civil partnership. In addition, a consequence of a couple having to end their marriage or civil partnership is that they may interrupt their contribution records for pensions and benefits.<sup>78</sup>

This policy would not have retrospective effect.<sup>79</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>80</sup>

## **3.3 Would churches be obliged to solemnize same sex marriages?**

### ***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 solemnize religious marriages for same sex couples.<sup>81</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>82</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>83</sup>

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

The Church of England’s response to the consultation was published on 12 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

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<sup>77</sup> *Ibid* p12

<sup>78</sup> *Ibid* p14

<sup>79</sup> *Ibid* p14

<sup>80</sup> *Ibid* pp16-17

<sup>81</sup> *Ibid* p3

<sup>82</sup> *Ibid* p9

<sup>83</sup> *Ibid* p9

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 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:

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>84</sup>

### ***Legal opinions***

The view of the legal profession is not unanimous.

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<sup>84</sup> Church of England, *A Response to the Government Equalities Office Consultation - "Equal Civil Marriage" - from the Church of England*, 12 June 2012 [accessed 25 January 2013]

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>85</sup> (a case concerning adoption) and claimed (at that time) that the ruling stated 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 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>86</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>87</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 challenge succeeding, as is clear from its own document. More importantly, even if

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<sup>85</sup> Application no. 25951/07

<sup>86</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 25 January 2013]

<sup>87</sup> Law and Lawyers, *Marriage - the changing scene*, 22 March 2012, updated twice [accessed 25 January 2013]



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>88</sup>

#### *Aiden O'Neill QC*

The Coalition for Marriage has published a summary of a legal opinion of Aiden O'Neill QC. The opinion relates to a series of scenarios related to legalising same sex marriage and includes consideration of the position of an NHS Chaplain; a teacher; parents; faith schools; foster couple; public facilities; marriage registrar and sex education.<sup>89</sup>

In the summary, for example, Aiden O'Neill considers that a Church of England chaplain at an NHS hospital who preaches that marriage is only for one man and one woman, while conducting a marriage in his parish church, would be at risk of discipline by the NHS for breaching the NHS diversity policy; and that the position would be the same for any chaplain employed within the public sector, such as armed forces chaplains or university chaplains. He also considers that a teacher might face dismissal for refusing to use a storybook about gay marriage. A local authority fostering agency might halt the application of a couple who do not support same sex marriage.

The summary states that Aiden O'Neill also addresses whether religious marriage celebrants could be forced to conduct gay weddings against their will:

The legal opinion suggests that an outright ban on religious gay weddings could be overturned under European human rights laws.

If a law is passed which allows religious gay weddings for those who wish to conduct them, but doesn't compel anyone to act against their conscience, that could be challenged under domestic equality laws. O'Neill says that churches, in general, would be better protected from hostile litigation if they stopped holding weddings altogether.

The summary considers the position of the Church of England:

As the established church, it is under a legal obligation to marry any persons who are eligible to marry in England. Even if Parliament passes a law which allows (but does not oblige) churches to host gay weddings, O'Neill advises that the UK Government could be in breach of European human rights laws if it allows the C of E to refuse gay weddings. This is because of the C of E's unique status as the established State church. O'Neill says the church would be in a safer position if it was disestablished.

(The Government has published a document, [Myths about Equal Marriage – Setting Out the Truth](#), which refutes some of the points made by Aiden O'Neill.)<sup>90</sup>

#### *Karon Monaghan QC*

The human rights organisation, Liberty, obtained a legal opinion from Karon Monaghan QC, (who is in the same chambers as Aiden O'Neill). This refuted allegations that there could be a successful legal challenge against faith groups which, for religious reasons, objected to marrying same sex couples:

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<sup>88</sup> Adam Wagner, "[Will the European Court force churches to perform gay marriages?](#)" *UK Human Rights Blog*, 12 June 2012 [accessed 25 January 2013]

<sup>89</sup> [Coalition for Marriage website](#), *Summary of the Aiden O'Neill legal opinion on gay marriage and liberty of conscience* (undated) [accessed 30 January 2013]

<sup>90</sup> Department for Culture Media and Sport, [Myths about Equal Marriage – Setting Out the Truth](#), [accessed 29 January 2013]

A refusal by a minister or a body opposed to same-sex marriage to conduct same - sex marriages would not violate the Equality Act 2010 so long as they could demonstrate that to do so would be in conflict with the strongly held convictions of a significant number of the religion's followers. Further, it is very unlikely that a refusal to conduct a same-sex marriage in such circumstances would unjustifiably violate the Convention rights of any other person, in particular those of a same-sex couple seeking to marry.

(...)

The Article 9 protection afforded religious organisations is strong. This too would provide real safeguards to a religious organisation that did not wish to conduct same-sex marriages on doctrinal grounds.<sup>91</sup>

Karon Monaghan considered that any requirement compelling a reluctant religious organisation to conduct gay marriages would itself fall foul of human rights protections:

Indeed a requirement that a church or other religious organisation conduct same-sex marriages, contrary to their faith, would very likely be regarded as discriminatory under Article 14 read with Article 9 as against it since "the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different." [*Thlimmenos v Greece* (2000) 31 EHRR 411 at para 44] Treating churches and religious organisations that have doctrinal objections to same-sex marriage in the same way as those that do not, is to fail to make a distinction between the two which will result in a discriminatory outcome.<sup>92</sup>

#### **Other comment**

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>93</sup>

Liberty made a similar point:

For example many religious denominations require both members of a couple to be members of their religion before they will consent to conduct a marriage – similarly religious denominations have not faced successful challenges for refusing to marry atheists.<sup>94</sup>

### **3.4 Response to consultation**

The consultation received a mixed reaction with strong opinions being expressed both for and against same sex marriage.

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<sup>91</sup> Liberty, *Liberty's submission to the Government Equalities Office consultation on Equal Civil Marriage*, June 2012, pp28-9 [accessed 30 January 2013]

<sup>92</sup> *Ibid* p42

<sup>93</sup> "Church of England warning on gay marriage", *BBC News*, 12 June 2012 [accessed 25 January 2013]

<sup>94</sup> Liberty, *Liberty's submission to the Government Equalities Office consultation on Equal Civil Marriage*, June 2012 [accessed 30 January 2013]

### **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.<sup>95</sup>

The Church of England did not believe 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.<sup>96</sup>

The Church of England set out the grounds on which it disagreed with the proposal for same sex marriage:

- the intrinsic nature of marriage, as enshrined in human institutions since before the advent of either church or state, is the union of a man and a woman.
- marriage affords many benefits to society, which include mutuality, fidelity and biological complementarity with the possibility of procreation.
- marriage is a central and unique social institution, not to be confused with the particular ceremony through which it is entered into.<sup>97</sup>

The response considered the consultation exercise to be "flawed, conceptually and legally". It also noted that not all LGBT 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 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>98</sup>

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<sup>95</sup> [A Response to the Government Equalities Office Consultation - "Equal Civil Marriage"- from the Church of England](#), 12 June 2012, Summary, p1 [accessed 25 January 2013]

<sup>96</sup> *Ibid*

<sup>97</sup> *Ibid* paragraph 6 [accessed 25 January 2013]

<sup>98</sup> *Ibid* paragraph 16

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>99</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.<sup>100</sup>

However, some senior members of the Church of England have argued for "recognition of God's grace at work in same sex partnerships" and indicated the range of opinion within the Church. They observed that "statements by church leaders past and present may have given the mistaken impression that the Church is universally opposed to the extension of civil marriage to same-sex couples".<sup>101</sup>

### ***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 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>102</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>103</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,

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<sup>99</sup> *Ibid* paragraph 24

<sup>100</sup> *Ibid*, Annex paragraphs 20-25, footnotes omitted

<sup>101</sup> Letter to *The Times*, "Church should rejoice over same sex marriages", 21 April 2012, see also Andrew Hough, "[Church of England should 'rejoice' over gay marriage, Bishops say](#)", *The Telegraph*, 21 April 2012, [accessed 30 January 2013]

<sup>102</sup> The Catholic Church in England and Wales, [Archbishops' Letter on Marriage](#), 8 March 2012 [accessed 25 January 2013]

<sup>103</sup> [Coalition for Marriage website](#) [accessed 25 January 2013]

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>104</sup>

The Catholic Bishops' Conference considered that marriage had a unique status:

10. The institution of marriage has intrinsic characteristics which contribute not only to the building up of the unitive relationship between husband and wife but also the relationships they have with any children of their marriage, with their extended family, their local community and with the wider society in which they live.

11. In this view, marriage is essentially conjugal and social, and derives its meaning from its function as the foundation of the family. Marriage joins husband and wife in a life-long bond that is ordered essentially, if not in every instance, to their roles as father and mother and recognises their responsibilities related to procreation and generational care-giving. If the institution of marriage is significantly diminished, so will the well-being of children, the family and of society.

12. The uniqueness of the institution of marriage is based on the fact that the human person exists as both male and female and that their union for the purpose of procreation, mutual support, and love has, over the centuries of human history, formed a stable unit which we call the family. Marriage has long been recognised as a positive building block of human society and has therefore been rightly recognised by societies and cultures as worthy of legal protection.

13. The social and procreative understanding of the institution of marriage predates all the cultures and societies of today. The institution of marriage has never prevented the development of other forms of friendship or human relationship within those cultures and societies but they have never been given the name of 'marriage'. Marriage is therefore unique and distinct from all other human relationships.<sup>105</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>106</sup>

At their Yearly Meeting in York in 2009, Quakers in Britain sought a change in the law so that same sex marriages could be prepared, celebrated, witnessed, reported to the state, and recognised as legally valid, without further process, in the same way as opposite sex marriages are celebrated in Quaker meetings. Quakers consider that they should be able to follow the insights of their membership in celebrating life-long committed relationships between a man and a man, or a woman and a woman, in exactly the same way as they currently recognise the marriage of opposite-sex couples.<sup>107</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:

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<sup>104</sup> [Response from the Catholic Bishops' Conference of England and Wales to the Government Consultation on "Equal Civil Marriage"](#), June 2012 [accessed 25 January 2013]

<sup>105</sup> Response from the Catholic Bishops' Conference of England and Wales to the Government Consultation on "Equal Civil Marriage", June 2012 [accessed 27 January 2013]

<sup>106</sup> Liberal Judaism website, [Liberal Judaism, Quakers and Unitarians Welcome Equal Marriage Consultation](#) [accessed 25 January 2013]

<sup>107</sup> Quakers in Britain website, [Quaker view on same sex marriages - updated December 2012](#) [accessed 30 January 2013]

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>108</sup>

### ***Gay rights campaigners***

Stonewall warmly welcomed the launch of the consultation.<sup>109</sup>

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 solemnize same sex marriage, but that religious organisations which wished to do so should be allowed to celebrate same sex marriage.<sup>110</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.

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<sup>108</sup> Quakers in Britain news release, [Faith bodies urge prime minister on gay marriage](#), 24 May 2012 [accessed 25 January 2013]

<sup>109</sup> [Stonewall welcomes the opening of the equal marriage consultation](#), 15 March 2012 [accessed 25 January 2013]

<sup>110</sup> [Stonewall Response](#), 20 March 2012 [accessed 25 January 2013]

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>111</sup>

### **Coalition for Equal Marriage**

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>112</sup>

### **Liberty**

Liberty warmly welcomed the consultation which it considered took “a historic step towards marriage equality”. Liberty expressed its belief “in freedom of thought, conscience and religion” and argued that this should include the option for faith groups to choose whether or not to host same-sex marriages.<sup>113</sup> It expressed its disappointment that “certain sections of the media and some senior religious and political figures have cast the proposal for same sex marriage as one which pits religious freedom against same-sex equality”:

Our human rights framework makes clear that this simplistic dichotomous approach is as inaccurate as it is unhelpful. In our free and fair society there is room for both religious freedom and equal treatment, with both principles finding legal protection under our Human Rights Act.<sup>114</sup>

Liberty considered that the consultation did not involve the Government imposing a definition of marriage on everyone, “it simply stops religious institutions from doing the same”.<sup>115</sup> It disagreed with arguments that allowing for same-sex marriage would “dilute the strength of the institution of marriage - around which our societal family structure is based”:

If a marital family unit is considered to be the most robust way to structure a society then why not extend it to everyone? Accepting that marriage is a common good and given the developments in other areas of law such as same-sex parenting, it is only logical that same-sex marriage be now introduced.<sup>116</sup>

The Liberty briefing also quotes a number of faith groups as supporting same sex marriage: Movement for Reform Judaism; the General Assembly of Unitarian and Free Christian Churches; and Liberal Judaism.

## **4 Government response to Equal Marriage consultation**

On 11 December 2012, the Government published its [response](#) to the consultation on equal civil marriage,<sup>117</sup> together with a [fact sheet](#) about equal marriage.<sup>118</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 (at that time) 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.

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<sup>111</sup> “[Gay marriage proposals are welcome but flawed](#)”, *PinkNews.co.uk*, 15 March 2012 [accessed 25 January 2012]

<sup>112</sup> [Coalition for Equal Marriage website](#) [accessed 25 January 2013]

<sup>113</sup> Liberty, *Liberty's submission to the Government Equalities Office consultation on Equal Civil Marriage*, June 2012, p5 [accessed 30 January 2013]

<sup>114</sup> *Ibid* pp18-19

<sup>115</sup> *Ibid* p21

<sup>116</sup> *Ibid*

<sup>117</sup> HM Government, *Equal marriage: The Government's response*, December 2012

<sup>118</sup> Home Office website, *The facts about equal marriage*, December 2012 [accessed 25 January 2013]

#### 4.1 The response document

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

##### ***Civil marriage ceremonies for same sex couples***

The Government recognised the broad range of strongly-held views on the issue of same sex marriage. The response document confirmed the Government's commitment to changing the law to make civil marriage ceremonies available for same sex couples and argued 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>119</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).

##### ***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 response stated that, after taking into account all the views expressed, the Government now intends to allow those religious organisations that want to conduct marriages for same sex couples to 'opt-in', without there being any obligation to do so.<sup>120</sup>

The legislation would not apply to the Church of England and Church in Wales, however, meaning that it would "continue to be illegal for these churches to marry same sex couples or to opt in to do so":

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.

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<sup>119</sup> HM Government, *Equal marriage: The Government's response*, December 2012 p11

<sup>120</sup> *Ibid* p17



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...<sup>121</sup>

The Government has since said that the provisions in the Bill are required to take account of the particular legal circumstances of the Church of England and Church in Wales and that they do not provide more, or less, protection than is given to other religious organisations.<sup>122</sup>

### ***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>123</sup>

The Government response stated that no religious organisation or its ministers would be forced to conduct marriage ceremonies for same sex couples and set out a “quadruple lock” of additional measures which (the Government stated) 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>124</sup>

The Government stated its intention that the legislation would 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

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<sup>121</sup> *Ibid* p18

<sup>122</sup> Department for Culture Media and Sport, *Myths about Equal Marriage – Setting Out the Truth*, (under the heading “MYTH: The Church of England and Church in Wales are being given extra protections”) [accessed 29 January 2013]

<sup>123</sup> *Ibid* p7

<sup>124</sup> *Ibid* p6

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>125</sup>

### **Civil partnerships**

Civil partnerships would be retained for same sex couples only, although the Government acknowledged that “the majority of those who responded to these consultation questions also suggested that civil partnerships should be available to opposite sex couples, though some argued that marriage should be the only option available”.<sup>126</sup> It would still be possible to have civil partnerships on religious premises (on the same basis as at present). 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>127</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>128</sup>

### **Gender recognition**

Individuals would be able to change their gender legally while remaining married, if both parties wished to do so. 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>129</sup>

### **Wider issues**

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

- administrative processes for marriage and civil partnerships, which would remain the same overall
- devolution<sup>130</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 stated in the response document that it now intended to create an exception for same-sex couples (only) in a marriage, meaning that they would not be able to cite non-consummation as a basis for annulling their marriage. Anyone, including someone in a same sex couple, was to be able to cite adultery to end their marriage if the behaviours currently defined in case law were exhibited:

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<sup>125</sup> *Ibid* p18

<sup>126</sup> *Ibid* p7

<sup>127</sup> *Ibid* p21

<sup>128</sup> *Ibid* p24

<sup>129</sup> *Ibid* p28

<sup>130</sup> Discussed in Section 7 of this paper

In practice this would mean for a same-sex married couple that, where one partner had sexual intercourse (within the meaning of the law for these purposes) with someone of the opposite sex, the other partner could cite adultery as grounds for divorce. If the behaviour exhibited fell short of the current legal definition of adultery, it would remain the case that this could be cited as unreasonable behaviour, as is the case with civil partnerships. In this way we believe that the current legal position on the meaning of adultery need not be changed. It will remain the case that a same-sex couple in a civil partnership will not be able to cite adultery to end their civil partnership. [Footnote: However, couples could use the same evidence to prove unreasonable behaviour to end their civil partnership.]<sup>131</sup>

- international recognition of legal same sex relationships
- pensions
- free speech: the Government “is clear” 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

## 4.2 Parliamentary debate

On 11 December 2012, Maria Miller, the Minister for Women and Equalities, made a statement to the House on the Government’s proposals to enable same sex couples to marry and said that the law relating to marriage was not static but had evolved:

In the 19th century inequalities prevented Catholics, atheists, Quakers and many others from marrying except in the Anglican Church. When that changed, was it accepted without protest? No, I am sure it was not. In the 20th century when the law was changed to recognise married men and married women as equal before law, was that accepted without fierce protest? No. In each century Parliament has acted—

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<sup>131</sup> HM Government, *Equal marriage: The Government’s response*, December 2012, pp30-1

sometimes radically—to ensure that marriage reflects our society to keep it relevant and meaningful. Marriage is not static; it has evolved and Parliament has chosen to act over the centuries to make it fairer and more equal. We now face another such moment—another such chance in this new century.<sup>132</sup>

The Minister recognised that the proposals to enable 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>133</sup>

Maria Miller 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>134</sup>

The unique position of the Church of England and the Church in 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>135</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>136</sup>

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>137</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

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<sup>132</sup> [HC Deb 11 December 2012 c155](#)

<sup>133</sup> [HC Deb 11 December 2012 c156](#)

<sup>134</sup> *Ibid*

<sup>135</sup> *Ibid*

<sup>136</sup> [HC Deb 11 December 2012 c157](#)

<sup>137</sup> [HC Deb 11 December 2012 c159](#)

right”.<sup>138</sup> Stephen Williams (Liberal Democrat) referred to the Government’s announcement as “a major strike for civil rights and equality in our country”.<sup>139</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>140</sup>

Martin Vickers (Conservative) asked whether the Minister would agree to seek an electoral mandate before proceeding with what he called “a major social change that many of those whom we represent find unacceptable”. Maria Miller replied that, on an electoral mandate, “the Conservative party’s commitment was set out in the contract for equalities, which sat alongside our manifesto at the election, and which laid out the importance of considering the case for changing the law”.<sup>141</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>142</sup>

The Minister 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>143</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>144</sup>

#### 4.3 Reaction to the Government’s revised proposals

##### ***Religious organisations***

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

- The Church of England 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.

(...)

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

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<sup>138</sup> *Ibid*

<sup>139</sup> [HC Deb 11 December 2012 c167](#)

<sup>140</sup> [HC Deb 11 December 2012 c163](#)

<sup>141</sup> [HC Deb 11 December 2012 c159](#)

<sup>142</sup> [HC Deb 11 December 2012 c166](#)

<sup>143</sup> *Ibid*

<sup>144</sup> [HC Deb 11 December 2012 c169](#)

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>145</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>146</sup>
- The Muslim Council of Britain (MCB) opposes what it called "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>147</sup>
- A statement from the General Secretary of the Methodist Church, the Revd Dr Martyn Atkins, reiterated the Methodist response to the consultation on Equal Civil Marriage, which had been drawn up by members of Faith and Order and the Methodist Council, that marriage should be between opposite sexes:

The Methodist Church, in line with scripture and traditional teaching, believes that marriage is a gift of God and that it is God's intention that a marriage should be a life-long union in body, mind and spirit of one man and one woman.

Dr Atkins commented that within the Methodist Church there was a spectrum of belief about sexuality; however the Church had explicitly recognised, affirmed and celebrated the participation and ministry of lesbians and gay men. He considered it should be for the Church to decide whether or not to conduct same sex marriages:

The Government has indicated that Churches which do not wish to marry same-sex couples will have the protection of law. This is important. However, in our response to the consultation we also stated that, while in the future we may or may not choose to affirm same-sex marriage, it would be unwarranted interference for the State to make that decision for us. For the purpose of religious freedom, if the Government allows marriage of same-sex couples in civil venues, then it must allow religious bodies to make the same choice. Whilst we recognise that most Christian Churches will probably choose not to offer same-sex marriages, the principle of religious freedom is an

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<sup>145</sup> Church of England website, [Same-sex Marriage and the Church of England](#), [accessed 25 January 2013]

<sup>146</sup> The Catholic Church in England and Wales, [Statement on the government response to the same sex marriage consultation](#), 11 December 2012 [accessed 25 January 2013]

<sup>147</sup> Muslim Council of Britain, [MCB opposes the discriminatory gay marriage law](#), 17 December 2012 [accessed 25 January 2013]

important one as it would leave with the Church the ultimate authority and autonomy to choose whether or not to do so<sup>148</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>149</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>150</sup>

### **Other reaction**

Politicians are divided in their response to the proposals. Conservative MPs are to have a free vote on the issue.<sup>151</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>152</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>153</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>154</sup>

Stonewall Chief Executive, Ben Summerskill, expressed delight with 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>155</sup>

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<sup>148</sup> The Methodist Church in Britain website, [Methodist response to proposals on same-sex marriage](#), 11 December 2012 [accessed 29 January 2013]

<sup>149</sup> Quakers in Britain website, [Quaker view on same sex marriages - updated December 2012](#) [accessed 25 January 2013]

<sup>150</sup> Liberal Judaism website, [Victory in equal marriage fight](#), 10 December 2012 [accessed 25 January 2013]

<sup>151</sup> [HC Deb 24 May 2012 cc1286-7](#)

<sup>152</sup> "Now Labour shows the strain over gay marriage", *Independent*, 18 December 2012; see also "Why Labour is now offering MPs a free vote on gay marriage", *New Statesman*, 11 December 2012 [both accessed 25 January 2013]

<sup>153</sup> [Freedom to marry website](#), [accessed 25 January 2013]

<sup>154</sup> "The Government has no mandate to redefine the meaning of marriage", *Telegraph*, 17 December 2012 [accessed 25 January 2013]

<sup>155</sup> Stonewall website, [Stonewall responds to the Government's announcement on equal marriage](#), 11 December 2012 [accessed 25 January 2013]

## 5 The Bill

The *Marriage (Same Sex Couples) Bill* (the Bill) was introduced into the House of Commons on 24 January 2013 as Bill 126 of 2012-13. The Bill is due to have its Second Reading debate on 5 February 2013. It is largely an amending Bill which would amend a number of other pieces of primary legislation. Some of the provisions would be given effect through secondary legislation. The Government has also published:

- [Explanatory Notes](#)<sup>156</sup>
- An [Impact Assessment](#)<sup>157</sup>
- A factsheet, [The facts about equal marriage](#)<sup>158</sup>
- [Myths about equal marriage – setting out the truth](#)<sup>159</sup>
- [Marriage \(Same Sex Couples\) Bill – A Short Guide](#)<sup>160</sup>

The Government has summarised what the Bill is intended to do:

The Marriage (Same Sex Couples) Bill:

- enables same-sex couples to marry in civil ceremonies;
- ensures those religious organisations that wish to do so can opt-in to conduct marriage ceremonies for same-sex couples;
- protects those religious organisations that do not wish to marry same-sex couples from successful legal challenge;
- enables civil partners to convert their partnership to a marriage, if they wish; and
- enables individuals to change their legal gender without having to end their marriage.<sup>161</sup>

### 5.1 Extent

The Bill would extend to England and Wales, although some provisions, detailed in the Explanatory Notes, (including provisions dealing with the treatment in the rest of the UK of marriages of same sex couples conducted in England and Wales; provisions relating to a change in gender of a married person or civil partner; and provisions relating to marriage overseas) would extend to Scotland and Northern Ireland.<sup>162</sup>

#### **Scotland**

Marriage is a devolved matter for Scotland. The Bill contains provisions that trigger the Sewel convention:

<sup>156</sup> Bill 126—EN

<sup>157</sup> Department for Culture Media and Sport, [Marriage \(Same-Sex Couples\) Bill](#), [accessed 28 January 2013]

<sup>158</sup> Department for Culture Media and Sport, [Equal Marriage a step closer as legislation published](#), January 2013 [accessed 25 January 2013]

<sup>159</sup> *Ibid*

<sup>160</sup> *Ibid*

<sup>161</sup> Department for Culture Media and Sport, [Marriage \(Same Sex Couples\) Bill – A Short Guide](#), January 2013 [accessed 31 January 2013]

<sup>162</sup> [Bill 126—EN](#), pp5-7. Further information about Scotland and Northern Ireland is provided in Part 7 of this paper below



The provisions relate to the power for the Secretary of State to make an order for a same sex marriage solemnized in England and Wales to be treated as a civil partnership under the law of Scotland; the power for the Secretary of State to make consequential amendments to the law of Scotland in devolved areas; the power for the Queen to make Orders in Council about how UK consulates overseas carry out marriages and how service personnel can marry overseas. The Sewel convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. If there are further amendments relating to such matters which trigger the convention, the consent of the Scottish Parliament will also be sought for them. In making any Order which amends Scottish legislation in devolved matters the Secretary of State or Lord Chancellor would first have to obtain the consent of the Scottish Ministers.<sup>163</sup>

### ***Northern Ireland***

Marriage is also a devolved matter for Northern Ireland. The UK Government intends to seek the agreement of the Northern Ireland Assembly to provisions which extend to Northern Ireland:

The UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters in Northern Ireland except with the agreement of the Northern Ireland legislature. There are a number of provisions within the Bill which trigger that convention. In addition to the provision of the Bill which affects Northern Ireland directly (the treatment of same sex couples married in England and Wales), the other provisions which trigger that convention are a power for the Secretary of State to make consequential amendments in devolved areas; a power to make provision by an Order in Council about how UK consulates overseas carry out marriages and how service personnel can marry overseas. If there are amendments to the Bill which trigger the convention, the agreement of the Northern Ireland Assembly will be sought for them.<sup>164</sup>

## **5.2 Part 1: Marriage of same sex couples in England and Wales**

### ***Extension of marriage to same sex couples***

**Clause 1** would legalise same sex marriage.

Same sex marriage could be solemnized only in accordance with:

- Part 3 of the *Marriage Act 1949* (the 1949 Act); this means:
  - civil marriages in register offices or on approved premises (for example, hotels);
  - if the relevant religious organisation has opted-in to marry same sex couples, religious marriages in registered buildings (this does not include buildings of the Church of England or Church in Wales); marriages according to the usages of the Society of Friends (commonly called Quakers); and marriages between two persons professing the Jewish religion according to the usages of the Jews; and
  - certain marriages for detained or house-bound persons;

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<sup>163</sup> [Bill 126—EN](#), paragraph 18

<sup>164</sup> [Bill 126—EN](#), paragraph 22

- Part 5 of the 1949 Act which provides for marriages in naval, military, and air force chapels, but not according to the rites of the Church of England or Church in Wales;
- The *Marriage (Registrar General's Licence) Act 1970* which provides for a marriage to take place when one of the parties is seriously ill and not expected to recover;
- an Order in Council made under Part 1 or 3 of Schedule 6 to the Bill, which deals with overseas marriages under UK law - consular marriage and marriage of forces personnel.

Under the *Submission of the Clergy Act 1533*, Canon law cannot be contrary to general law. **Clause 1(3)** provides that no Canon will be regarded as contrary to the general law by virtue of providing only for opposite sex marriage (as Canon B30 does).

The common law duty for the clergy of the Church of England or the Church in Wales to marry parishioners would not be extended to same sex couples. Such clergy would not be obliged to marry same sex couples and, likewise, same sex couples would not have the right to have their marriages solemnized by clergy of the Church of England or Church in Wales (**Clause 1(4)**).

***Marriage according to religious rites: no compulsion to solemnize etc***

**Clause 2** would provide that religious organisations and individuals could not be compelled to:

- solemnize, attend, participate in, or consent to the conduct of, same sex marriages;
- undertake an “opt-in activity” (listed in a table – the Government’s Explanatory Notes summarise the list as meaning “the various types of activity relating to the decision of a religious organisation to opt-in to solemnizing marriage for same sex couples”); opt-in activities would include, for example, applying for the registration of a building; or
- refrain from undertaking an “opt-out activity”, which is defined as an activity which reverses or otherwise modifies the effect of an opt-in activity.

**Clause 2** would not apply to superintendent registrars and registrars, or the Registrar General, who accordingly would be required to conduct marriage ceremonies for same sex couples, on the same basis that civil partnership registrars are currently required to register civil partnerships for same sex couples.<sup>165</sup> This would be in line with the decision of the European Court of Human Rights in *Eweida and Others v the United Kingdom [2013]*<sup>166</sup> insofar as it related to Lillian Ladele, a registrar of births, deaths and marriages for the London Borough of Islington.<sup>167</sup>

**Clause 2(5)** would provide an exemption for individuals and organisations from the prohibition, in [section 29](#) of the *Equality Act 2010*, of discrimination in the provision of services and the exercise of public functions. It would achieve this by inserting a new Part 6A into Schedule 3 to the *Equality Act*. Part 6A would provide that a person does not contravene the prohibition in section 29 only because that person does not conduct, participate in or consent to a same sex marriage ceremony on the ground that it is a marriage of a same sex couple.

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<sup>165</sup> HM Government, *Equal marriage: The Government's response*, December 2012, p14

<sup>166</sup> ECHR 37

<sup>167</sup> This case is discussed in section 1.10 of this paper above

***Marriage for which no opt-in necessary***

**Clause 3** would replace the existing section 26 in Part 3 of the 1949 Act with a new section 26. The section deals with marriages which may be authorised on the authority of two certificates of a superintendent registrar. The existing section deals only with the marriage of a man and a woman, but the new section would also authorise certain same sex marriages without the need for any opt-in. The new section 26 would authorise:

- a religious marriage between a man and a woman in a registered building, according to whatever form and ceremony the couple see fit to adopt;
- a civil marriage for any couple in a register office;
- a civil marriage for any couple on approved premises (for example, an hotel);
- a religious marriage between a man and a woman according to the usages of the Quakers or the Jewish religion;
- a qualifying residential marriage which means:
  - the marriage of a man and woman one of whom is house-bound or detained (other than a marriage in accordance with the usages of the Quakers or the Jewish religion) at the residence of the house-bound or detained person
  - a civil marriage of a same sex couple one of whom is house-bound or detained at the residence of the house-bound or detained person
- a marriage between a man and a woman in a church or chapel of the Church of England or the Church in Wales.<sup>168</sup>

***Opt-in: marriage in places of worship***

**Clause 4** would insert a new section 26A into the 1949 Act to enable a religious same sex marriage to be conducted in a registered (religious) building according to whatever form and ceremony the couple see fit to adopt, on the authority of two certificates of a superintendent registrar. This would only be possible if, when the application for registration of the building was made, the relevant governing authority of the religious organisation had given written consent to marriages of same sex couples (that is, had opted-in). Effectively, it is for religious organisations to decide who is competent to give consent for these purposes (and for various other purposes in the Bill).

This section would not apply to marriages in the Church of England or Church in Wales.

**Schedule 1**, which is introduced by **Clause 4**, would deal with the detail of the registration of (religious) buildings as places where same sex marriages could be conducted; the appointment of authorised persons for the purposes of same sex marriages; and the cancellation of registration. The Registrar General would have power, with the approval of the Secretary of State, to make procedural regulations. Registration of a building for same sex marriage could be additional to or separate from registration for opposite sex marriage. The person authorised for marriages of same sex couples may be the same or different from the person authorised for opposite sex marriages. As is already the case, Quakers and people professing the Jewish religion would be able to carry out marriages in places that are

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<sup>168</sup> The clause refers only to the Church of England. However, it would insert a new section in to the *Marriage Act 1949*. Section 78(2) of that Act (interpretation) provides that, "Any reference in this Act to the Church of England shall, unless the context otherwise requires, be construed as including a reference to the Church in Wales"

not registered and would not need to appoint authorised persons.<sup>169</sup> The provisions of **Schedule 1** are described in detail in the Explanatory Notes.

The new section 26A would be subject to other new provisions (set out in **Schedule 1**) to be inserted into the 1949 Act, and any regulations made under them, relating to the registration of buildings shared by more than one religious organisation.

#### ***Opt-in: other religious ceremonies***

**Clause 5** would insert a new section 26B into the 1949 Act to enable other religious same sex marriages to be solemnized (where there is no requirement for registration of a building):

- according to the usages of the Society of Friends (Quakers), if the recording clerk for the time being of the Society of Friends in London has given written consent to marriages of same sex couples;
- of couples professing the Jewish religion according to the usages of the Jews, if the relevant governing authority has given written consent to marriages of same sex couples;
- of a same sex couple if one or both are house-bound or detained, according to other religious rites or usages (other than the rites of the Church of England or Church in Wales) at the usual place of residence of the house-bound or detained person(s), if the relevant governing body has given written consent to marriages of same sex couples according to those religious rites or usages.

#### ***Armed forces chapels***

**Clause 6** would amend Part 5 of the 1949 Act, which deals with marriage in naval, military, and air force chapels. It would make provision for the registration of military chapels for the solemnization of same sex marriages, otherwise than in accordance with the rites of the Church of England or the Church in Wales. The procedure for registering these chapels would be set out in regulations made by statutory instrument.

#### ***Opt-in: “deathbed marriages”***

**Clause 7** would amend section 1 of the *Marriage (Registrar General’s Licence) Act 1970* which provides for a marriage to take place (otherwise than in accordance with the rites of the Church of England or the Church in Wales) when one of the parties is seriously ill and not expected to recover. The amended section 1 would enable the Registrar General to authorise a religious marriage of a same sex couple only if the relevant governing authority had consented to marriages of same sex couples. Marriages according to the rites of the Church of England or the Church in Wales cannot be authorised under section 1 of the 1970 Act, both now and if amended in accordance with the provisions of the Bill.

#### ***Power to allow for marriage of same sex couples in the Church in Wales***

**Clause 8** would enable the Lord Chancellor, if satisfied that the Governing Body of the Church in Wales had resolved to allow for the marriage of same couples according to their rites, and having regard to that resolution, to make an order to enable the Church in Wales to conduct such same sex marriages (in accordance with the resolution). The Lord Chancellor’s order would amend legislation of England and Wales, as necessary. The Lord Chancellor’s power could not be transferred under the *Ministers of the Crown Act 1975*. The Explanatory Notes set out why particular provision is being included for the Church in Wales:

The Church in Wales is in the same position as the Church of England as regards marriage law despite the disestablishment of the Church in Wales by virtue of the

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<sup>169</sup> [Bill 126—EN](#), paragraph 76

Welsh Church Act 1914. However, this disestablishment means that the Church in Wales is not itself able to put legislation before Parliament (unlike the Church of England). The power in this clause is therefore required so that the law can be changed to allow the Church in Wales to marry same sex couples (if it were to resolve to allow it), without the need for primary legislation. An order under this clause is subject to the affirmative procedure.<sup>170</sup>

### ***Conversion of civil partnership into marriage***

**Clause 9** would authorise civil partners to convert their civil partnership into a marriage in accordance with a procedure established by regulations. The regulations would be made by the Registrar General with the consent of the Secretary of State, for civil partnerships registered in England and Wales; and by the Secretary of State for certain civil partnerships formed outside the UK (civil partnerships registered at British consulates or by armed forces personnel where England and Wales is the relevant part of the UK for the purposes of the registration). The Explanatory Notes point out that neither power to make regulations would be subject to any Parliamentary procedure.<sup>171</sup> **Clause 9** sets out matters which might be covered by the regulations.

When a civil partnership is converted into a marriage, it would end on the conversion and the resulting marriage would be treated as having subsisted since the date the civil partnership was formed.

### ***Extra-territorial matters***

A same sex marriage under the law of any part of the UK (other than England and Wales) or of any other country or territory might be recognised under the law of England and Wales; whether the law of the place of the marriage provided for same sex marriage before or after the relevant provision in the Bill takes effect (**Clause 10**). The Explanatory Notes state that this provision would apply to existing or new marriages of same sex couples.<sup>172</sup>

**Clause 10** would give effect to **Schedule 2** which would make further provision about extra-territorial matters, including the treatment in Scotland and Northern Ireland of English and Welsh marriages of same sex couples:

#### *Scotland*

The Secretary of State, with the consent of the Scottish Ministers, might order that, under the law of Scotland, the marriage of a same sex couple under the law of England and Wales would be treated as a civil partnership formed in England and Wales. The Secretary of State would also be able to make an order to specify cases in which a marriage would not be treated as a civil partnership, and to provide that the treatment of the marriage as a civil partnership is to have effect subject to provisions made by the order.

The order making power might be exercised only if marriage of same sex couples was not lawful under the law of Scotland. The Explanatory Notes comment that, “Without legal recognition of their status, a same sex couple who married in London, for example, and subsequently moved to Scotland would not be recognised as being in any legal relationship”.<sup>173</sup>

The Explanatory Notes set out the effect of the law of Scotland changing to legalise same sex marriage:

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<sup>170</sup> [Bill 126—EN](#), paragraph 50

<sup>171</sup> [Bill 126—EN](#), paragraphs 51-2

<sup>172</sup> [Bill 126—EN](#), paragraph 55

<sup>173</sup> [Bill 126—EN](#), paragraph 83

[A]n order that has been made, will continue to be valid even if marriage of same sex couples becomes lawful in Scotland, though at that point the Order could be revoked. This means that couples recognised as civil partners during the period between this Bill coming into force and any Scottish legislation coming into force would not retrospectively lose rights acquired as civil partners during that period, as if they had in effect been two single persons.<sup>174</sup>

The effect of any order would be subject to any provisions to the contrary in certain other legislation including other provisions of, and certain orders made under, the Bill.

#### *Northern Ireland*

Under the law of Northern Ireland, a same sex marriage under the law of England and Wales would be treated as a civil partnership. The Secretary of State might by order specify cases where a marriage is not to be treated as a civil partnership or provide that the treatment is to have effect subject to provisions made by the order. The effect of any order would be subject to any provisions to the contrary in certain other legislation including other provisions of, and certain orders made under, the Bill.

**Schedule 2** would also make further provision about dissolution, annulment or separation where a marriage is treated as a civil partnership in Scotland or in Northern Ireland.

#### ***Effect of extension of marriage***

**Clause 11** provides that under the law of England and Wales, marriage would have the same effect in relation to same sex couples as it has in relation to opposite sex couples. Existing and new law would be interpreted as applying equally to the marriage of same sex and opposite sex couples. **Schedule 3** (interpretation of legislation) would make further provision about the interpretation of references to marriages in existing and new legislation in England and Wales.

The equivalence provisions of **Clause 11** and **Schedule 3** would not affect Measures, Canons and subordinate legislation of the Church of England (whenever made) or other law relating to the Church of England which the Secretary of State prescribes by order.

**Schedule 4** (effect of extension of marriage: further provision) would cover a range of areas:

#### *Private legal instruments*

**Clause 11** would not affect the meaning of private legal instruments, such as wills and deeds and existing documents governing a charity, made before the clause comes into effect. The Explanatory Notes observe that, "In future, after this Bill is enacted, a reference to marriage in any new document may be understood as including a same sex marriage (depending, for example, on the precise terminology of the document)".<sup>175</sup>

#### *Presumption on birth of child to married woman*

The common law presumption that a child born to a woman during her marriage is also the child of her husband would not be extended. This means that if a child is born to a woman in a same sex marriage, the presumption would have no relevance in determining the child's parents.

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<sup>174</sup> [Bill 126—EN](#), paragraph 84

<sup>175</sup> [Bill 126—EN](#), paragraph 105

*Divorce and annulment of marriage*

Only conduct between one party to the marriage and a person of the opposite sex might constitute adultery. Non-consummation would not be a ground on which a marriage is voidable (may be annulled) for a same sex couple.

*Matrimonial proceedings*

**Part 4 of Schedule 4** would introduce a new Schedule 1A into the *Domicile and Matrimonial Proceedings Act 1973* to deal with jurisdiction in relation to the marriage of same sex couples. The provisions of the new schedule are described in detail in the Explanatory Notes,<sup>176</sup> which include the following introductory comment:

Overseas couples who enter into a same sex marriage in England and Wales but remain or become habitually resident or domiciled in another country may not be able to end their marriage in that country if it does not recognise the existence of the relationship. Part 4 therefore amends the Domicile and Matrimonial Proceedings Act 1973 to provide a "jurisdiction of last resort" so that those same sex couples who are unable to divorce or obtain other matrimonial order in the country which would normally have jurisdiction are able have their case heard in the courts in England and Wales. "Jurisdiction" means a court's authority to deal with the case. The courts in England and Wales will be able to assume jurisdiction if the couple were married in England or Wales and where it is the interests of justice to do so.<sup>177</sup>

The new schedule would deal with jurisdiction over divorce orders; judicial separation; nullity orders; presumption of death orders; and declarations of validity.

*State pensions*

**Part 5 of Schedule 4** would make provision about a person's entitlement to the State Pension based on their current or deceased spouse's or civil partner's National Insurance record. Under current rules, a person who is or has been married or in a civil partnership may be able to draw on the contribution record of their (former) spouse or civil partner to improve their entitlement (a "category B pension"). These rules were originally designed to help married women, on the assumption that they would have little or no pension in their own right. The provisions were later extended to married men (and widowers) and civil partners. Initially, they could not qualify in all the circumstances that married women and widows could. However, from April 2010, broadly the same rules have applied to them as previously applied to married women.<sup>178</sup> Following consultation, the Government said it intended to treat same sex married couples in the same way as civil partners.<sup>179</sup> The details are set out in the Explanatory Notes.<sup>180</sup> The category B pension is to be abolished, with some transitional protection, as part of the Government's plans to introduce a single-tier state pension for future pensioners from April 2017 at the earliest. The rationale is that the large majority of individuals should qualify for a full single-tier pension on the basis of their own contributions.<sup>181</sup>

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<sup>176</sup> [Bill 126—EN](#), paragraphs 109 to 115

<sup>177</sup> [Bill 126—EN](#), paragraph 109

<sup>178</sup> [Social Security Contributions and Benefits Act 1992](#), sections 48 to 54; [A detailed guide to State Pensions for advisers and others](#), Pension Service, September 2008, p44

<sup>179</sup> [Equal marriage – the Government's response, December 2012](#), December 2012, Executive Summary, para 1.22 and p32-3

<sup>180</sup> [Marriage \(Same Sex Couples\) Bill 2012-13; Explanatory Notes Paragraphs 116-122](#)

<sup>181</sup> DWP, [The single-tier pension: a simple foundation for saving](#), CM 8528, January 2013, Annex 3 D; For more detail, see Library Standard Note SN 6525 Single-tier state pension.

### *Occupational pensions and survivor benefits*

**Part 6 of the Bill** provides for inheritance of occupational pension rights. Following consultation, the Government said it intended to treat same sex married couples in the same way as civil partners for these purposes.<sup>182</sup> The details are set out in the Explanatory Notes.<sup>183</sup>

These provisions are discussed in more detail in a House of Commons Library Standard Note SN 3035 [Pensions: civil partnerships and same sex marriages](#).<sup>184</sup>

### *General*

Certain provisions of the Bill (referred to as the "equivalence provisions") have a wide general effect. These provisions are set out in the Explanatory Notes:

- clause 11(1) and (2) (which provide for marriage to have the same effect in relation to same sex couples that it has in relation to opposite sex couples and for the law of England and Wales to have effect accordingly) and Schedule 3 (which supports clause 11(1) and (2) by making specific provision about the interpretation of legislation);
- clause 9(7)(b) (which provides that, where a marriage is converted into a civil partnership, the marriage has effect as if it had subsisted since the date when the civil partnership was formed).

**Part 7 of Schedule 4** provides that the wide general effect of the equivalence provisions would not apply in particular cases where there is contrary provision in any other provision in the Bill; any subordinate legislation made under the Bill; any new legislation in England and Wales, including contrary provision contained in amendments of existing legislation in England and Wales; or by an order made by the Secretary of State.

## **5.3 Part 2: Other provisions relating to marriage and civil partnership**

### ***Change of gender of married persons or civil partners***

**Clause 12 and Schedule 5** would provide for change of gender of married persons or civil partners.

The *Gender Recognition Act 2004* (the GRA) provides a procedure for a person to apply for a gender recognition certificate. The consequence of receiving a gender recognition certificate is that the applicant is treated in the eyes of the law as being of their acquired gender. In order to receive a full gender recognition certificate, a transsexual person must be unmarried and not in a civil partnership. An applicant who is married or in a civil partnership will be issued with an 'interim' gender recognition certificate and must end their marriage or civil partnership before they can get a full gender recognition certificate. This is because, under current UK law, a marriage is only valid if it is contracted by two persons of the opposite sex in law. A civil partnership may only be registered between people of the same sex in law.

**Schedule 5** would amend the GRA to enable an existing "protected marriage" (defined to mean a marriage under the law of England and Wales or a marriage under the law of a country or territory outside the UK) to continue where one or both parties change their legal gender and both parties wish to remain married. A civil partnership under the law of England and Wales (a "protected civil partnership") could continue if both parties gained legal

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<sup>182</sup> [Equal marriage – the Government's response, December 2012](#)

<sup>183</sup> [Marriage \(Same Sex Couples\) Bill 2012-13; Explanatory Notes Para 123-30](#)

<sup>184</sup> SN3035, last updated 31 January 2013



recognition in their acquired gender at the same time and wished to remain in their civil partnership. In these cases a full gender recognition certificate could be issued to the applicant.

An interim gender recognition certificate would be issued if the applicant's spouse did not consent to the marriage continuing; or the marriage was not a protected marriage; or the applicant was in a protected civil partnership and the other civil partner had not gained a gender recognition certificate at the same time as the applicant; or the applicant was in a non-protected civil partnership.

If an interim gender recognition certificate was issued to an applicant who was a civil partner and the couple subsequently decided to convert their civil partnership into a protected marriage under clause 9 of the Bill, following conversion the applicant could apply for a full gender recognition certificate, if specified conditions were met.

The Explanatory Notes set out detailed information about the proposed procedures.<sup>185</sup>

### **Marriage overseas**

**Clause 13 and Schedule 6** would deal with overseas marriage, including same sex marriage, in British consulates; "certificates of no impediment" issued to facilitate overseas marriages and civil partnerships carried out under local laws, indicating that the relevant party is entitled to get married or enter into a civil partnership; and marriages of armed forces personnel overseas. The *Foreign Marriage Act 1892* would be repealed; the Explanatory Notes state that the Orders in Council that may be made under Schedule 6 would replace the provision currently made by the 1892 Act.<sup>186</sup> With regard to consular marriages, the Explanatory Notes state that "the United Kingdom government would need to approach host governments in countries where same sex marriage facilities do not exist to seek their approval to conduct same sex marriages".<sup>187</sup>

## **5.4 Final provisions**

**Part 3, Clauses 14 to 18 and Schedule 7**, deals with final provisions including:

- **Clause 14** would enable the Secretary of State or Lord Chancellor, by order, to amend UK legislation when making an order to deal with any transitional, transitory or saving provision in connection with the coming into force of any provision of the Bill, or consequential provisions. If the order makes amendments to primary legislation it must be made by affirmative procedure, otherwise the power would be subject to negative procedure.

## **6 The Bill - implications for schools**

Prior to the Bill's publication, several press articles suggested that the legislation may act to compel teachers to 'promote' the concept of same sex marriage, or to teach that same-and opposite-sex marriage were morally equivalent.<sup>188</sup> Some articles claimed that teachers could face the sack, or may find themselves the subject of court proceedings under European human rights legislation, if they failed to teach about same sex marriage.<sup>189</sup> The Minister for

<sup>185</sup> [Bill 126—EN](#), paragraphs 135-159

<sup>186</sup> [Bill 126—EN](#), paragraph 60

<sup>187</sup> [Bill 126—EN](#), paragraph 163

<sup>188</sup> See, for example: "[Gay marriage could signal return to 'centuries of persecution', - say 1,000 Catholic priests](#)" *Daily Telegraph*, 11 January 2013; "[CofE 'will be sued over gay marriage'](#)"; [Human rights law undermines Cameron plans](#)", *Daily Mail*, 14 January 2013.

<sup>189</sup> "Teachers' jobs are at risk for opposing gay marriage; teachers 'could legally face sack' on gay marriage", *Daily Telegraph*, 25 January 2013, Pp 1 – 2.

Equalities was repeatedly quoted as saying that while teachers would not be able to be discriminatory, they would not be required to 'promote' same sex marriage.<sup>190</sup>

On 10 December 2012, Maria Miller made the following comments on teaching children about marriage including same-sex marriage:

**Mr Julian Brazier (Canterbury) (Con):** Will my right hon. Friend reassure us that whatever is announced tomorrow, no teacher will face prosecution or civil action as a result of espousing a Christian view of marriage?

**Maria Miller:** My hon. Friend is right to raise this issue, which has been a concern for many of our constituents. I can confirm that nothing will change what children are taught. Teachers will be able to describe their belief that marriage is between a man and a woman, while acknowledging that same-sex marriage will be available. It is important to reassure people. There is a great deal of what perhaps one could call scaremongering. It is important that teachers and faith schools are aware that they will continue to enjoy the same situation as they do now.<sup>191</sup>

The Bill does not propose any amendments to the existing primary legislation on SRE nor make any provisions specifically in respect of teachers. In a post on the [DCMS 'blog'](#) written on the day of the Bill's publication, Maria Miller gave reassurances about the Bill's impact on teachers:

There has been some debate about how this Bill will affect teachers and teaching about marriage in schools. Let me make it absolutely clear, that teachers will continue to have the clear right to express in a professional way their own beliefs, or that of their faith, such as that marriage should be between a man and a woman.

No teacher will be required to promote or endorse views which go against their beliefs. As with any area of the curriculum, teachers will of course be required to teach the factual position that under the law, marriage can be between opposite-sex couples and same-sex couples.

But, of course they will not be required to promote same-sex marriage, and neither will we be bringing in new powers to sack teachers who disagree with same-sex marriage.

There are already many subjects which need to be taught carefully, particularly in faith schools – divorce, for example. The guidance governing these issues is the same guidance that will govern how same sex-marriage is handled. And equally, parents will continue to have the right to withdraw their children from sex education lessons that they do not consider appropriate.<sup>192</sup>

## 7 Scotland and Northern Ireland

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

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<sup>190</sup> See for example: "[Maria Miller: teachers not forced to promote gay marriage but must not 'discriminate'](#)", *Daily Telegraph*, 25 January 2013

<sup>191</sup> [HC Deb 10 December 2012, c 31](#)

<sup>192</sup> Maria Miller/ DCMS blog article, *In the business of protecting freedoms*, 25 January 2013 (accessed 28 January 2013)

## 7.1 Scotland

On 2 September 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>193</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>194</sup>

On 12 December 2012, the Scottish Government launched a consultation on a draft Bill to allow same sex marriage in Scotland.<sup>195</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 draft Bill also proposes general changes to marriage law, including civil ceremonies taking place anywhere (other than religious premises) and the establishment of ‘belief’ ceremonies (eg humanists) as a third way of getting married in Scotland. 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 was “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>196</sup>

## 7.2 Northern Ireland

Northern Ireland has no current plans to consult on or introduce marriage for same sex couples.<sup>197</sup> On 1 October 2012, the Northern Ireland Assembly rejected a motion calling for same sex couples to be married in the province.<sup>198</sup>

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<sup>193</sup> Scottish Government press release, [Views sought on same sex marriage](#), 2 September 2011 [accessed 28 January 2013]

<sup>194</sup> Scottish Government press release, [Same sex marriage to be legalised](#), 25 July 2012 [accessed 28 January 2013]

<sup>195</sup> Scottish Government, [Marriage and Civil Partnership \(Scotland\) Bill](#), 12 December 2012 [accessed 28 January 2013]

<sup>196</sup> HM Government, [Equal marriage: The Government's response](#), December 2012, p31

<sup>197</sup> HM Government, [Equal marriage: The Government's response](#), December 2012, p31

<sup>198</sup> [Northern Ireland Assembly 1 October 2012](#). See also, Henry McDonald, “Northern Ireland assembly rejects motion on gay marriage”, *Guardian*, 1 October 2012 [accessed 25 January 2013]

## 8 Reaction to the Bill

This section sets out a selection of early comments on the Bill.

### 8.1 Church of England

On 25 January 2013, the Rt Rev Tim Stevens, Bishop of Leicester, issued an initial statement about the Bill, and said that further comment would be made when the Bill had been examined more closely. He acknowledged the progress which had been made on the issue of effective legal safeguards and the commitment of the Government to addressing the Churches' concerns. He regretted that more time had not been made available before publication of the Bill "to give every detail the attention it deserves". Bishop Stevens reiterated the Church of England's view of marriage:

The Church of England however continues to hold the view, set out in doctrine and Canon law, that marriage is a union between one man and one woman. It is a social institution that predates both church and state and has been part of the glue that has bound countless successive societies together. I welcome the opportunity that civil partnerships have given to enable same sex couples to mark and celebrate their commitment to each other. Further, I recognise that there is a range of views amongst the membership of the Church of England. I do not however believe that holding to a traditional understanding of marriage is, or should be, regarded as a discriminatory position.

Many principled and practical concerns about legislating to redefine marriage were set out in the Church of England's submission to the Government consultation in June 2012. For the Church of England, in common with other denominations and faiths, one central test of this Bill is whether it will preserve and guarantee religious practice and religious conscience. We recognise that the Government has sought hard to do so in the drafting, but as the legislative process continues we shall wish to press serious questions about the implications for wider society, for the significance of procreation and upbringing of children as part of the purpose of marriage, the effect on teaching in schools, and the work of chaplains and others with religious convictions who are involved in public service delivery...<sup>199</sup>

### 8.2 Catholic Bishops' Conference of England and Wales

On 25 January 2012, Archbishop Peter Smith, Vice President of the Catholic Bishops' Conference of England and Wales, issued a statement regretting that the Bill had been introduced "to change the definition of marriage". He said that, alongside many people of all faiths and none, they would be vigorously opposing the Bill:

Marriage has an identity distinct from any other relationship, no matter how much love or commitment may be involved. Marriage is and always has been the union of one man and one woman, for love and mutual support, open to procreation. Marriage has, over the centuries, been the enduring public recognition of this commitment and it has rightly been recognised as unique and worthy of legal protection. It furthers the common good of society because it promotes a unique relationship which benefits children. The fundamental problem with the Marriage (Same Sex Couples) Bill is that it will radically alter the meaning of marriage for everyone and therefore undermine the common good. This is what is at stake. The Bill also raises very serious questions especially about religious freedom and freedom of expression, the effect on teaching in schools, and the work of chaplains and others with religious convictions involved in the delivery of public services.

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<sup>199</sup> Church of England website, [Bishop of Leicester responds to Marriage \(Same Sex Couples\) Bill](#), 25 January 2013 [accessed 29 January 2013]

There is no electoral mandate for this Bill and last year's consultation process was shambolic. We welcome the promise of a free vote for MPs, and hope the Bill will be defeated.<sup>200</sup>

The Catholic Bishops' Conference of England and Wales has also issued a briefing on the Bill to Members of Parliament.<sup>201</sup> The briefing argues (among other things) that the meaning of marriage matters to everyone, and that retaining marriage solely for opposite sex couples would not be discriminatory. It also questions whether the "safeguards" in the Bill would fully protect religious organisations:

There is a risk that the ECtHR will find that the protections provided by the Bill are incompatible with the Convention under Article 8 alone, or Articles 8 and 12, read with Article 14, on the ground that the Bill adopts a discriminatory regime by enabling some religious organisations to refuse to perform same sex marriage ceremonies.

A key reason for this increased risk is that Britain, by changing the law on 'marriage' as such would open up the prospect that a discrimination claim could succeed because the claimed discrimination would then come 'within the ambit' of Article 12. It is clear that a challenge directly under Article 12 would be unlikely to succeed (because the ECtHR has held there is no right to same sex marriage under Article 12) but a claim under Article 14 read with Article 12 is a different matter.

The Government has argued that the chance of a successful challenge to the protections in the ECtHR is low on the basis that Article 9 (protecting freedom of religion) would protect the safeguards. But the recent judgment by a Chamber of the ECtHR in the case of *Eweida and Others v The United Kingdom* [2013] ...illustrates that the right to freedom of thought, conscience and religion (Article 9) does not provide adequate protection when there is a clash between it and other competing rights and interests. The Government cannot therefore guarantee that the ECtHR would accept the safeguards put in place to protect the position of individuals and organisations that have a conscientious objection to same sex marriage, should a challenge be brought...<sup>202</sup>

### 8.3 Quakers in Britain

The Quakers welcomed the publication of the Bill. Recording clerk, Paul Parker, said: "This is good news. We believe we are all born equal and therefore our love is equal too. This is the change in law we have been seeking." Quakers consider this to be an issue of religious freedom which allows them to conduct same-sex marriages in their meeting houses and other faith groups to have liberty to follow their own beliefs.<sup>203</sup>

The Quakers have also published a fact sheet which sets out key points:

- Quakers see God in everyone and that leads us to say that all committed loving relationships are of equal worth. We therefore wish to celebrate them in the same way within a couple's worshipping community.
- A civil partnership is a legal contract; a religious marriage is a spiritual contract.

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<sup>200</sup> Independent Catholic News, [Bishops comment on same-sex marriage Bill](#), 25 January 2013 [accessed 29 January 2013]

<sup>201</sup> The Catholic Bishops' Conference of England and Wales, [Briefing to Members of Parliament on the Marriage \(Same Sex Couples\) Bill](#), 29th January 2013 [accessed 29 January 2013]

<sup>202</sup> *Ibid*

<sup>203</sup> Quakers in Britain News Release, [Quakers look forward to equal marriage](#), 24 January 2013 [accessed 29 January 2013]

- We do not seek to impose this on anyone.
- We are working with others – the Unitarians, United Reformed Church, and Liberal and Reformed Judaism, who also want same-sex equal marriage.<sup>204</sup>

#### 8.4 Liberal Judaism

Rabbi Aaron Goldstein, the co-chair of the Rabbinic Conference of Liberal Judaism has said that he looks forward to being able to marry couples whether they are same-sex or opposite sex. He urged for common sense in the passing of the Bill.<sup>205</sup>

#### 8.5 Stonewall

Stonewall urged supporters in England and Wales to write to their MPs calling on them to support the measure. Stonewall Chief Executive Ben Summerskill said:

Sadly the minority of people who oppose equal marriage consistently use mistruths and smears to argue against it. Supporters of this modest measure mustn't let a vocal minority block equality. People must write to, tweet, email or call their MPs to ask them for their support before the Bill's Second Reading debate on 5 February.

We need straight people with lesbian, gay or bisexual friends or relatives to stand up for their rights too. Equality benefits everyone, which is why we need every supporter to press MPs to vote for it. Our message is simple. Speak now, or forever hold your peace.<sup>206</sup>

#### 8.6 Peter Tatchell

Peter Tatchell considered that the Bill would discriminate against opposite sex couples:

While legalising marriage equality is welcome and commendable, the government's refusal to end discrimination against straight couples in civil partnership law is flawed and wrong. Opposite-sex couples are legally prohibited from having a civil partnership and for no rational reason David Cameron intends to keep it that way.

Despite proclaiming that the legalisation of same-sex civil marriage is driven by the principle of equality, the government's forthcoming legislation will retain the inequality of the current legal ban on heterosexual civil partnerships.

This will mean that for the first time in British law gay couples will have legal privileges over heterosexual couples.

He called for both civil marriages and civil partnerships to be open to all couples, without any sexual orientation discrimination:

This issue is not about numbers. It is about equality. Even if only a handful of straight people wanted a civil partnership, they are entitled to have one.<sup>207</sup>

#### 8.7 Liberty

Liberty welcomed the Bill as a step towards "true equality":

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<sup>204</sup> [Quakers and same-sex equal marriage Engaging in the national debate](#), [accessed 29 January 2013]

<sup>205</sup> Rabbi Aaron Goldstein, "As a Rabbi, I'm praying for common sense over the same-sex marriage bill debate", [www.pinknews.co.uk](#), 25 January 2013 [accessed 29 January 2013]

<sup>206</sup> Stonewall, [Speak now, or forever hold your peace](#), 25 January 2013 [accessed 29 January 2013]

<sup>207</sup> Peter Tatchell, [Gay couples will have legal advantage under Cameron plan](#), 25 January 2013

The publication of the Marriage (Same Sex Couples) Bill is another historic step towards true equality for the UK. When it comes to discrimination on the grounds of sexual orientation, we have come a long way in recent years – this legislation represents the natural culmination of that progress. Marriage is one of the most significant celebrations of love and commitment to another. It's quite right that it finally be opened up to everyone, regardless of their sexuality.

As the Bill confirms, claims and fears about the impact on religious denominations' freedom to express religious views are completely without foundation. Adequate legal protection has been included in the legislation's provisions to ensure that no religious body or faith minister will be forced to conduct same-sex marriages. And Article 9 of both the European Convention on Human Rights and the Human Rights Act 1998 will add further protection for religious organisations, alongside the Bill's legal safeguards.

We have a proud human rights framework in this country – one protecting both equality and freedom of religion. That's now being extended to allow those faith groups wishing to do so to conduct and celebrate gay marriage, which is hugely encouraging.<sup>208</sup>

### 8.8 British Humanist Association

The British Humanist Association (BHA) welcomed the move towards equality but regretted that there was no provision to enable the BHA to conduct same sex marriages. Andrew Copson, Chief Executive of the BHA commented:

We welcome this move towards equality for same sex couples, but the exclusion of humanist celebrants from this Bill is unfair. Our celebrants have been conducting same sex wedding ceremonies for many years, and although our colleagues in Scotland are to be given the right to conduct legal same sex marriages, in the rest of the UK we will continue to be denied that opportunity. We're calling on the UK government to address this as the Bill moves through parliament. It is wrong for same sex religious couples to be given the chance to have a marriage in accordance with their own beliefs but not couples who want a humanist marriage to reflect their own beliefs which are just as deeply held.<sup>209</sup>

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<sup>208</sup> Liberty News, *A Bill For Religious Freedom And True Equality*, 25 January 2013 [accessed 29 January 2013]

<sup>209</sup> British Humanist Association, *Marriage (Same Sex Couples) Bill unfairly excludes humanists*, 25 January 2013 [accessed 29 January 2013]