



# BRIEFING

## INTRODUCTION

Marriage is “the voluntary union for life of one man and one woman to the exclusion of all others.”<sup>1</sup> It is certainly about two people who love each other, but it is more than that. Marriage is bigger than the two individuals involved.

Marriage has a unique place in our society. It is a bedrock institution and the most stable environment for raising children. Redefining marriage would make marriage adult-centred rather than child-centred. In those handful of nations that have gone ahead and redefined marriage, the status of marriage within those societies has been damaged.

Marriage has a place in our laws. The word “marriage” appears over 3,000 times in UK legislation, associated words like husband, wife, father, mother also appear thousands of times. It is woven into the fabric of our legislation and politicians can’t rewrite it at a stroke without causing huge upheaval and far-reaching consequences.

Marriage has a place in our history. The oldest recorded English law referencing marriage between husband and wife goes back 800 years – and part of that legislation is still in force today. Marriage is yet older than that. It predates the English language and our nation, and it predates the Christian church. It is as old as the hills, not a recent invention of society to be refashioned on a political whim.

Marriage has a place in our affection. Most people hold marriage in very high regard. A majority of our young people aspire to get married one day.<sup>2</sup> Seven in ten people agree that, although death or divorce may prevent it, the ideal situation for a child is to be raised by their married mother and father.<sup>3</sup> Marriage doesn’t belong to politicians, they don’t own it and they have no right to redefine it over the heads of the people.

## MARRIAGE BY NUMBERS

- There are around 24 million married people in the UK.<sup>4</sup>
- Most people get married and most marriages last for life.<sup>5</sup>
- The number of UK marriages in 2010 was 277,740. This is a rise of 4 per cent compared with 2009 when there were 267,898 marriages.<sup>6</sup>
- The number of civil partnerships formed in the UK by same-sex couples was 6,385 in 2010. The total number of civil partnerships formed in the UK since the Civil Partnership Act came into force in December 2005, up to the end of 2010, is 46,622.<sup>7</sup>

## NO MANDATE FOR REDEFINING MARRIAGE

A year after the election, the Prime Minister announced in his 2011 Conservative Party Conference speech that the Government was to consult on redefining marriage.<sup>8</sup> No one doubts his personal belief that he wants to see the law changed.<sup>9</sup> But redefining marriage was not even in the Conservative Party Manifesto. Neither was it in the Coalition agreement.

The fact remains that none of the three main political parties at Westminster made redefining marriage part of their election manifesto. The Government has no mandate for this monumental change to our culture, which will require 800 years of legislation to be rewritten and abolish "husband and wife" as legal terms in law.

Marriage is going to be redefined over the heads of the 24 million married people in this country. This is profoundly anti-democratic. The Government is running away from this public debate. They are bulldozing ahead without any thought for the consequences.

## A SHAM CONSULTATION

The Home Secretary, in meetings with church leaders, has emphasised that the consultation is about "how" not "whether" to redefine marriage. This message was repeated by Equalities Minister Lynne Featherstone to the Liberal Democrat Conference.<sup>10</sup>

On the day the consultation was launched Lynne Featherstone said: "The essential question is not whether we are going to introduce same-sex civil marriage but how."<sup>11</sup>

Nick Clegg, the Deputy Prime Minister, has underlined this message, saying that the Government intends to legislate before the next election in 2015.<sup>12</sup>

So even before consultation began the Government had already made up its mind. The inclusion of a question to ask the public what they think about the plans is a very late but welcome development. Nevertheless, there is no democratic mandate for this radical change.

On 3 May 2010, only four days before the last election, the Conservative Party published a document called 'A Contract for Equalities'. Some claim this publication provides some sort of legitimacy. But hardly any of the electorate will have been aware of this obscure document. Moreover the pledge given within its covers does not reflect what the Government is now doing. It stated:

"We will also consider the case for changing the law to allow civil partnerships to be called and classified as marriage."<sup>13</sup>

The Government is not "considering" the case, it has already made its mind up ahead of the consultation. The entire focus of the consultation is on the mechanics of redefining marriage.

## **THE MAJORITY DON'T SUPPORT REDEFINING MARRIAGE**

The current position is that since 2005 same-sex couples can enter into a civil partnership, which already provides all the legal rights of marriage. The Government wants to go a step further and also legalise same-sex marriage.

Opinion poll questions that ask about "gay marriage" or "same-sex marriage" without mentioning the legal rights provided by civil partnerships are asking about a scenario which simply does not exist.<sup>14</sup>

British Social Attitudes (BSA) found in 2008 that 63% oppose same-sex marriage when respondents were told about the existence of civil partnerships. This survey remains the largest (n=3,000) and most statistically robust British study to date on same-sex marriage. It asked respondents to choose one of three options – support for civil partnerships, support for same-sex marriage or opposition to both.

A ComRes telephone poll for the Coalition for Marriage released on 8 March found a very clear majority support the current definition of marriage (n=1,000). The question

asked respondents to choose between whether they supported the status quo with civil partnerships or whether they wanted same-sex marriage. It found:

- A majority of the public oppose same-sex marriage given that all the legal rights of marriage are already available through civil partnerships (51% oppose same-sex marriage; 34% agree; 14% don't know or no answer).
- 86% believe that it is possible to be tolerant of the rights of others and protective of traditional marriage at the same time. The poll was carried out in January 2012.<sup>15</sup>

A ComRes online poll for Catholic Voices released on 8 March asked two separate questions: first, whether respondents supported civil partnerships (59% said yes they did); and second, whether they believed marriage should remain as an exclusive commitment between a man and a woman (70% said it should).<sup>16</sup> This poll had a relatively large sample (n=2,000).

A poll by YouGov for the Sunday Times, published on 11 March, used the same three propositions as BSA.<sup>17</sup> It found that 32% opposed same-sex marriage whilst supporting civil partnerships and an additional 15% opposed both. So 47% opposed gay marriage with 43% supporting it and 10% saying they don't know.

The evidence is clear; the majority don't support redefining marriage.

## CHANGING THE LEGAL AND LINGUISTIC LANDSCAPE

Throughout history and in virtually all cultures marriage has been between one man and one woman. This is to be swept away. Familiar words like husband, wife, mother and father will disappear from the statute book. Once these changes have been made, using these words could be prohibited in public documents and banned in the public sector.

Changing the language about marriage inevitably changes the language about parenthood.

In Spain, some Canadian provinces, and some US states where gay marriage is legal, official documents have been changed so that they no longer refer to "mother" or "father", instead using language such as "progenitor 1, progenitor 2" or "parent A, parent B".<sup>18</sup> Even before marriage has been redefined in the UK these kinds of changes are now happening and will greatly accelerate if the change is made.

The introduction of civil partnerships has meant that the words "bachelor" and "spinster" have already been dropped from marriage certificates.<sup>19</sup> Now that lesbian couples can have IVF, all child passport application forms in the UK are to be redesigned to remove the words "mother" and "father", replacing them with "parent 1 and parent 2".<sup>20</sup>

Legislation still frequently uses terms such as husband (1003 times), wife (888), spouse (2740), or "husband and wife" (342).<sup>21</sup> There are 3,000 references to marriage in current law. The oldest reference is to an Act passed in 1285, in the reign of King Edward I. Part of this legislation is still in force. It also includes the term "husband and wife".

But if marriage is redefined these words could be swept away from the statute book.

If this sounds far fetched, consider Stonewall's draft Bill. The very first Clause of the Bill deletes the words "a husband and wife" from the Matrimonial Causes Act 1973, replacing them with "parties to a marriage".<sup>22</sup>

## **THE COST AND COMPLEXITY OF REDEFINING MARRIAGE**

Redefining marriage will be expensive, have complicated policy implications, have bewildering effects on the English language and lead to further unfairness.

Civil partners already have all the legal rights of marriage, something which is denied many other house-sharers in situations of great difficulty. Two sisters who live together for 40 years cannot enter a civil partnership. If one dies leaving property to the other then full inheritance tax has to be paid. That would not apply to two lesbians in a civil partnership.

To legalise same-sex marriage also involves complex policy choices. First the Government has to decide whether it wants civil partnerships to continue. According to the consultation the Government wants there to be two legal options for homosexuals (civil partnerships and marriage), but only one for heterosexuals (namely marriage). This is hardly equality.

Surely this state of affairs is wide open to legal challenge by an unmarried heterosexual couple on discrimination and human rights grounds? Peter Tatchell's 'Equal Love' campaign is already running a court case on this issue.<sup>23</sup>

If civil partnerships become open to heterosexuals and marriage open to same-sex couples then even the leading gay rights advocate admits this would cost £5 billion.<sup>24</sup> The Liberal Democrats passed a conference motion favouring this option of opening up both civil partnership and marriage to any two adults gay or straight. The huge cost comes from the likely uptake of civil partnerships by heterosexuals under this plan, together with the associated tax, benefits and pension rights.

## TRADITIONAL MARRIAGE BENEFITS CHILDREN

Redefining marriage affects all of us because it weakens the status of traditional marriage, which provides the most stable environment for raising children. Just one in eleven married couples split by the time of their child's fifth birthday compared to one in three of cohabiting couples. 97% of couples who stick together until their children reach adulthood are married.<sup>25</sup>

This is important because children who are not brought up in two parent households are 75% more likely to fail at school, 70% more likely to be a drug addict, 50% more likely to have an alcohol problem, 40% more likely to have serious debt problems and 35% more likely to experience unemployment/welfare dependency. And this does not even address the economic costs, or the effects on the physical and mental health of children.<sup>26</sup>

Jack Straw MP, when a member of the previous Labour Government, said that children are "best brought up where you have two natural parents in a stable relationship". He said the evidence showed "that stability is more likely to occur where the parents are married than where they are not".<sup>27</sup>

A recently published Government paper cites the importance of the stability marriage provides, observing: "Given that married relationships tend to have greater longevity and stability than other forms, this Government believes marriage often provides an excellent environment in which to bring up children. So the Government is clear that marriage should be supported and encouraged."<sup>28</sup>

## PEOPLE ARE ALREADY BEING PUNISHED FOR THEIR VIEWS ON TRADITIONAL MARRIAGE

If the law is changed there is great concern that, increasingly, people will be punished in their careers, charities will be closed down and couples will be prevented from fostering, all because of their views on traditional marriage.

Adrian Smith, a housing manager in Manchester was demoted and had his salary cut by 40% because of his views on marriage expressed on his Facebook page.<sup>29</sup>

Former leader of the SNP, Gordon Wilson, was voted off the board of Dundee Citizens Advice Bureau for supporting traditional marriage.<sup>30</sup>

Islington Council effectively sacked registrar, Lillian Ladele, for refusing to register same-sex civil partnerships.<sup>31</sup>

Peter and Hazelmary Bull, the owners of a B&B in Cornwall, have been forced to pay £3,600 in damages to a same-sex couple because they restricted double rooms to married couples. They applied the same policy to unmarried heterosexuals.<sup>32</sup>

Almost all Roman Catholic adoption agencies have been closed down because of their views on traditional marriage.<sup>33</sup>

The Archbishop of York, Dr John Sentamu, has been sent “abusive and threatening” racist emails after speaking out against same-sex marriage.<sup>34</sup>

David Burrowes MP received a death threat and hate mail after speaking out in support of traditional marriage.<sup>35</sup>

If marriage is redefined there would be important implications for parents – would they have the right to have their children withdrawn from lessons which promote it? And would teachers also have a right of conscience so that they would not have to teach gay marriage?

## THE SLIPPERY SLOPE TO FURTHER REDEFINITIONS

The evidence from around the world is that once marriage is treated as having a flexible definition, pressure grows for that definition to be changed yet again. This should be no surprise as there are advocates of same-sex marriage who openly support also changing the law to permit polygamy.<sup>36</sup>

### Netherlands

In Holland, same-sex marriage was introduced in 2001. Since then, three-way relationships have been given legal recognition through a “cohabitation agreement”.<sup>37</sup>

### Mexico City

Mexico City introduced same-sex marriage in 2009, and now two-year fixed-term marriages have been proposed. Instead of divorce the two-year marriage is not renewed.<sup>38</sup>

### Canada

Same-sex marriage legislation in 2005 replaced the term “natural parent” with “legal parent” in Canadian law.<sup>39</sup> In January 2007 an Ontario appeal court ruled that a child can legally have three parents.<sup>40</sup> In British Columbia there are major attempts to legalise polygamy through the courts using the precedent of same-sex marriage.<sup>41</sup>

### Spain

Same-sex marriage was legalised in 2005. The following year it was announced that birth certificates would read “Progenitor A” and “Progenitor B” instead of father and mother.<sup>42</sup>

## **Massachusetts**

In November 2003 a Massachusetts court said same-sex marriage had to be legalised and gave six months for it to be introduced. In response, the State Department of Public Health changed the standard marriage certificate to read "Party A" and "Party B", instead of "husband" and "wife".<sup>43</sup>

## **SAME-SEX MARRIAGE AROUND THE WORLD**

Only ten out of the 193 UN member countries<sup>44</sup> have legalised same-sex marriage: Argentina, Belgium, Canada, Iceland, Netherlands, Norway, Portugal, South Africa, Spain and Sweden.

Same-sex marriages have also been introduced in Mexico City, the Brazilian state of Alagoas, the US District of Columbia and nine US states (Connecticut, Iowa, Massachusetts, New Hampshire, New York, Vermont, Maryland, Maine and Washington State).

The American public in 31 US states have rejected same-sex marriage by voting for constitutional amendments supporting the traditional definition of marriage.<sup>45</sup>

## **EQUALITY DOESN'T MEAN UNIFORMITY**

Equality doesn't mean sameness. Same-sex couples already have the legal rights of marriage available through civil partnerships. So there is no need to redefine marriage on equality grounds. It is perfectly possible to support traditional marriage, while also recognising the rights of others.

The irony is that basing public policy on a principle of 'eradicating difference' only leads to more inequality. This is strikingly obvious with the government's plans, which give marriage and civil partnerships to same-sex couples, but only marriage to heterosexuals. That's hardly equal.



# HUMAN RIGHTS CHARTERS

The Universal Declaration of Human Rights (Article 16) says:

Article 16.

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Other articles make reference to “everyone has the right...” or “no one shall be...”, but here in Article 16 marriage is very clearly between men and women. The framers of the Declaration saw no breach of human rights in talking of marriage as between “Men and women of full age”.

Similarly, the European Convention on Human Rights (Article 12) reads:

Article 12.

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

The issue of gay marriage has come before the European Court of Human Rights on a number of occasions. In 2010 it ruled against a gay couple, Horst Schalk and Johann Kopf, who had brought a case because gay marriage was not legal in Austria.<sup>46</sup> The UK Government intervened in the case, urging the Court to find in favour of Austria.<sup>47</sup> The Court ruled that:

“...all other substantive Articles of the Convention grant rights and freedoms to ‘everyone’ or state that ‘no one’ is to be subjected to certain types of prohibited treatment. The choice of wording in Article 12 must thus be regarded as deliberate.”<sup>48</sup>

In the ruling, the court acknowledged that a same-sex couple has a right to a family life without interference from government, as set out in Article 8 of the Convention, but that still “does not impose an obligation on Contracting States to grant same-sex couples access to marriage”.<sup>49</sup>

This finding, that gay marriage is not a right found within the Convention, was recently repeated in a ruling on a separate case relating to a French lesbian couple who could not jointly adopt a child because gay marriage is not lawful in France. In March 2012 the Court ruled against the couple, referencing its earlier 2010 ruling about gay marriage.<sup>50</sup>

## APPENDIX: BRITISH SOCIAL ATTITUDES (2008)

The British Social Attitudes (BSA) found in 2008 that 63% oppose same-sex marriage when respondents were told about the existence of civil partnerships. This survey remains the largest and most statistically robust British study to date on same-sex marriage. BSA have not asked the question since their 2008 survey. BSA is not to be confused with Scottish Social Attitudes.

Q. About how same-sex couples should be treated in law. Which comes closest to your view ... they should be allowed legally to marry OR should be allowed legally to form civil unions, but not marry OR should not be allowed to obtain legal recognition for their relationships?

	2008	
(1.00) Should be allowed legally to marry	33.70%	670
(2.00) Should be allowed legally to form civil unions, but not marry	37.02%	736
(3.00) Should not be allowed to obtain legal recognition for their relationships	25.55%	508
(9.00) Not answered	3.72%	74
		1,988

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- <sup>14</sup> See for example the ICM poll for The Sunday Telegraph on 11 March 2012 which was reported as showing that 45% supported and 36% opposed moves to legalise same-sex marriage. The poll did nothing of the sort. Respondents were not told that civil partnerships provide the legal rights of marriage, nor were they given the option of saying they supported civil partnerships but opposed gay marriage.
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