



MARRIAGE (SAME SEX COUPLES) BILL LORDS SECOND READING BRIEFING

SUMMARY

There is no mandate – it wasn't in the manifesto of any major party.

A sham consultation – it deliberately ignored 500,000 people.

Huge public opposition – reliable polls and local elections show the public don't want it.

Lacking proper scrutiny – every Parliamentary shortcut has been taken.

Free votes not genuine – politicians' careers were threatened.

Conscience amendments whipped – Labour MPs whipped at Report Stage.

Civil partnerships free-for-all – costing the taxpayer at least £4bn.

Impact on schools – teachers that refuse to endorse this will be sacked.

Alters the meaning of words – 'husband' and 'wife' will get new meanings.

Undermines marriage – marriage has declined in nations that have redefined marriage.

Ignores children's needs – marriage becomes all about the rights of adults.

Leaves churches vulnerable – Government protections can't be guaranteed.

People will be punished – treated like outcasts for believing in traditional marriage.

Further redefinitions – once you start, where does it end?

Splitting Church and State – it is a recipe for disestablishment.

Equality isn't uniformity – equality already exists, there's no need for this.

DRAMATIC POLICY U-TURNS

Three days before the 2010 General Election, David Cameron was interviewed on Sky News by Adam Boulton. Mr Cameron was asked a direct question about whether he would legalise same-sex marriage, and he said he had “no plans” to change the law of marriage. The meaning of his words was clear, and supporters of same-sex marriage were deeply upset by it.

After the General Election, the Conservatives formed a coalition government with the Liberal Democrats and together they published the Programme for Government. That document, which set out the coalition’s agenda, made absolutely no mention of same-sex marriage. It was never part of the agreement.

Despite promising the voters he would not change the law of marriage, despite it not being part of the coalition agreement, the Government announced in February 2011 its plans to redefine marriage. There was to be a consultation, but it would only be on “how” to do redefine marriage, not “whether” to. The consultation was a sham, allowing multiple anonymous responses from overseas while rejecting 500,000 names and addresses of UK residents who opposed the policy.

To avoid concerns about religious liberty, the Government made it clear that same-sex weddings would only be allowed to take place in civil settings. But, as soon as the sham consultation process was over, the Government flipped that policy and allowed religious same-sex weddings. This policy flip exposes churches, mosques, temples and synagogues which opt out of same-sex weddings to the threat of hostile litigation.

The Government also promised that civil partnerships would not be extended to include heterosexuals, but that policy has now flipped as well. To avoid defeat on a key amendment at Report Stage in the House of Commons, the Government accepted a Labour manuscript amendment to begin an immediate review of civil partnerships. The review will consider whether to allow heterosexual couples to enter a civil partnership. That will mean a two-tier system offering couples the option of ‘marriage-lite’. The Bill has already begun to unravel in ways which undermine marriage, and it will continue to do so.

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.¹ No one doubts his personal desire to see the law changed.² But redefining marriage was not even in the Conservative Party Manifesto. None of the three main political parties at Westminster made redefining marriage part of their election manifesto. The issue was not even in the coalition agreement.

On 3 May 2010 the Conservative Party published a document called 'A Contract for Equalities'. Some claim this publication provides some sort of legitimacy.

But whatever was said in this obscure document, within hours of its publication David Cameron went on Sky News – just three days before the General Election – to declare that he was “not planning” to introduce same-sex marriage.³

And the undertaking given in 'A Contract for Equalities' is very tentative. It states:

“We will also consider the case for changing the law to allow civil partnerships to be called and classified as marriage.”⁴

The Government has not 'considered' the case at all. It made its mind up ahead of the consultation, and the focus of the consultation was on the mechanics of redefining marriage.

The Government has ignored concerns expressed from within its own Party concerning the lack of mandate for instituting this change. An open letter written to The Daily Telegraph and signed by 58 parliamentarians, 43 of them Conservative, explicitly stated: “We believe that the Government does not have a mandate to redefine marriage” and that given the absence of gay marriage from the main manifestos, “These facts alone should have led to extreme caution on the part of those calling for this change to be made.”⁵ Deputy Leader of the Liberal Democrats Simon Hughes, a supporter of same-sex marriage, again challenged the Government's approach, reminding MPs that “this was in no election manifesto” and advised the Minister to “proceed very carefully and cautiously.”⁶

The Government has no mandate for this monumental change to our culture, which will require 800 years of legislation to be re-written and redefine the terms “husband” and “wife”.

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 Government says that the consultation was always about “how” not “whether” to redefine marriage. But it did eventually include a “whether” question in the consultation – after coming under significant pressure to do so. The narrow majority the Government secured in favour of redefining marriage (53% to 46%) was only obtained by ignoring half-a-million names and addresses which had been submitted to the consultation – people who very clearly said “no” to redefining marriage. When they are included, the consultation

found that more than 80% are opposed to the plans. Sir Gerald Howarth noted during the announcement of the consultation response that, "the consultation exercise has been a complete sham; and that the Government has made up their mind in advance what outcome they wanted".⁷

The consultation process was wide open to fraud, since the Government's online response form was anonymous. Anyone anywhere in the world could submit a response, as many times as they liked. This is not the way a genuine, reputable consultation should be conducted.

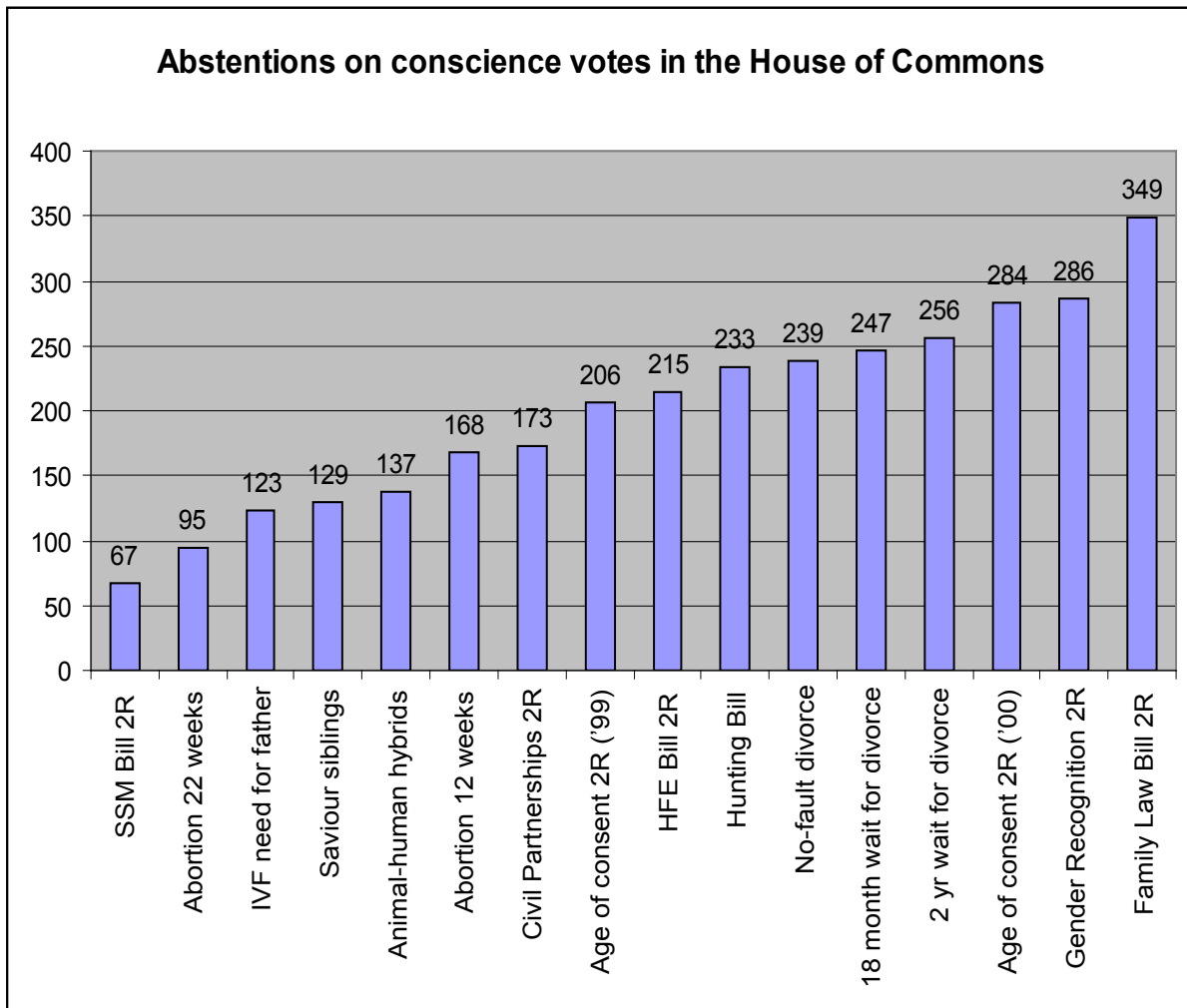
The Government had been absolutely firm in the consultation document that same-sex weddings would not be allowed on religious premises.⁸ Those who responded to the consultation, relying in good faith on the Government's assurances about religious premises, found that the Government's final proposals were radically different to those on which it consulted. Shortly before Christmas, the Government announced a major policy U-turn: same-sex ceremonies will after all be introduced in churches as well as in civil settings.⁹

NO PROPER SCRUTINY

The consideration of the Marriage (Same Sex Couples) Bill in the House of Commons has been cursory at best. During the 6-hour Second Reading debate, backbenchers were limited to speeches of four minutes. Though the vote at Second Reading was supposed to be a free vote, there have been numerous reports of undue pressure put on MPs by party hierarchies, including alleged blackmail.¹⁰ Former MP Paul Goodman wrote that, for Conservatives, "there has been no free vote, at least at when it comes to members of the Executive: it has been made very clear to Ministers which lobby the Prime Minister wants them to go into".¹¹ Almost three in ten (27%) of Conservative MPs have admitted in a confidential poll that they did not believe the vote was a genuine free vote. One in ten Labour MPs expressed the same opinion, though the poll suggests that it was a genuine free vote on the Lib Dem benches, as no Lib Dem member raised concerns.¹²

Abstention is an option always open to an MP on a free vote. They might agree with the principle at stake but reject voting for it because of the lack of safeguards or because they judge it to be politically inexpedient. Typically around 200 MPs abstain on conscience issues. But on same-sex marriage it was only 67.

Analysis of those who were absent or abstained at Second Reading shows an unusually small number of MPs not voting when compared to other free votes on conscience issues:



In many ways, the closest parallels to a vote on the Marriage (Same Sex Couples) Bill are the votes on the age of homosexual consent (206 and 284 abstentions) or the votes on marriage in the Family Law Bill (349, 256, 247 and 239 abstentions).

The Marriage (Same Sex Couples) Bill was committed to a Public Bill Committee even though the serious and contentious issues involved warranted Committee on the Floor of the House. The Public Bill Committee was made up of 15 MPs who had voted for the legislation at Second Reading and only four who had voted against. After around 10 hours of evidence sessions, MPs went on to consider the detail of the Bill for just under 20 hours. In contrast, the Hunting Bill was considered for more than 80 hours in Public Bill Committee. This included recommitment to Standing Committee after one day of Report.

Of the 20 hours the Marriage (Same Sex Couples) Bill spent being debated in Committee, backbench opponents of the legislation spoke for in excess of 12 hours. Government

ministers spent less than 3 hours responding to the points raised, a fact that tends to illustrate their unwillingness to engage with the issues. The Opposition front bench also only spoke for 2-3 hours in total. Advocates of the Bill tabled few amendments and simply wanted the Bill to proceed quickly. No amendments were made in Committee.

Although two days were given for Report, fundamental issues of conscience were restricted to a two and a quarter hour debate on the first day. Having already programmed debate on conscience amendments to finish at 7pm, the Government included a Statement which ate up an hour of the available time. As a consequence, only three conscience amendments were voted on even though eight were tabled (one was withdrawn after Government undertakings to devise a solution). A further two and a quarter hours were taken up discussing heterosexual civil partnerships, leaving no time for debate on other amendments. MPs spent almost the whole of the second day of Report, four and a half hours, debating humanist weddings and transsexual benefits. There were no votes on the second day of Report, which begs the question why so much time was allocated to them. As Edward Leigh MP said at Third Reading: "What a pity we had only two hours to discuss the protection of people in the workplace."¹³

At Report, the Labour leadership whipped against a series of amendments to protect the freedom of conscience of those who disagree with same-sex marriage. Shadow Justice Minister Robert Fleelo initially co-signed several amendments, but his name was later withdrawn.

As is usual, one hour was spent on Third Reading with the vote at the end.

At the conclusion of its Commons stages, the Marriage (Same Sex Couples) Bill had received approximately 49 hours of consideration. By contrast the 2002-3 hunting legislation received twice as much scrutiny, being debated for 97 hours altogether. Earlier hunting bills had taken up even more time. The Marriage (Same Sex Couples) Bill simply has not received the level of scrutiny in the House of Commons which is proper for such controversial legislation.

The Government has opted for the minimum possible number of sitting days between the Bill completing its Commons stages and the first debate in the Lords. The Lords print of the Bill was first made available on Wednesday 22 May on the day the House rose early for the recess, when comparatively few Peers were around. In scheduling Second Reading of such a contentious Bill on the first day back after the Whitsun recess the Government has again shown its unseemly haste to ram this provision through Parliament. It is continuing its railroading of the Bill by scheduling only two days of Committee in the Lords, at the earliest opportunity after Second Reading.

PRECEDENTS FOR A SECOND READING VOTE

It is because of the lack of democratic legitimacy, the lack of public consultation, the fact that there was no green or white paper, and the wholly inadequate scrutiny of the Bill, that the House of Lords would be right to resist the Bill at Second Reading.

The House of Lords normally gives bills a Second Reading, but there are clear precedents for not doing so. The Salisbury-Addison Convention, stemming from 1945, was introduced to protect manifesto promises for which the public had clearly voted at a General Election.

The Salisbury-Addison Convention does not apply to the Marriage (Same Sex Couples) Bill for two reasons. First, the legislation did not feature in the Conservative or Lib Dem party manifestos and second, even if it did, the Bill is subject to a free vote.

The Joint Committee on Conventions in 2006 affirmed that the House has the power to refuse to give a Second Reading to Government Bills where there is a free vote.¹⁴

In the 1990-91 session the House of Lords rejected the War Crimes Bill at Second Reading, and in 1999 a Bill to lower the age of consent was also defeated at the same stage. These are both key parallels to the Marriage (Same Sex Couples) Bill: both were free vote issues and neither of them were contained in a manifesto so the Salisbury-Addison Convention did not apply.

The War Crimes Bill was rejected despite it having received a majority of over 200 at Second Reading in the Commons and despite the fact it had been preceded by the Hetherington-Chalmers War Crimes Inquiry, which lasted 15 months. This Bill had considerably more scrutiny than the Marriage (Same Sex Couples) Bill, but was still sent back to the drawing board by Peers. The legislation introducing same-sex marriage has had no pre-legislative enquiry or public consultation on the principle of the Bill.

There is a long history of Government Bills being opposed at Second Reading in the Lords. Most recently Labour voted against the Health and Social Care Bill in October 2011. The party argued that since we had a coalition Government the Salisbury-Addison Convention did not apply. It also disputed whether the particular Bill was in any case covered by a manifesto commitment.

Government Bills: Opposition at Second Reading in the Lords since 1970

- 1971 Immigration Bill
- 1972 European Communities Bill
- 1973 Counter-Inflation Bill
- 1973 Maplin Development Bill
- 1978 Scotland Bill
- 1990 War Crimes Bill

- 1991 War Crimes Bill
- 1996 Firearms (Amendment) Bill
- 1998 European Parliamentary Elections Bill
- 1999 Sexual Offences (Amendment) Bill
- 2000 Disqualifications Bill
- 2000 Criminal Justice (Mode of Trial) (No. 2) Bill
- 2003 Fire Services Bill
- 2007 Fraud (Trials without a Jury) Bill
- 2011 Health and Social Care Bill

Private Members' Bills: Opposition at Second Reading

- 2006 Assisted Dying for the Terminally Ill Bill

THE SALISBURY-ADDISON CONVENTION

Under the Salisbury-Addison Convention stemming from 1945, the Lords does not block a Government Bill which is in their manifesto.

The Convention came about at a time when there were no life peers, only hereditaries, bishops and law lords sitting in the Lords. In 1999 all but 92 hereditaries were ejected from the House. Lord Strathclyde, a former Conservative Leader of the House, said in 2001 that the Convention "deserves to be reviewed" given the "new composition" of the House of Lords.¹⁵ He added that the Convention: "never envisaged that this House must bow down, like Pavlov's dogs--or, dare I say, like poodles--before another place on matters outside the manifesto, on details of legislation or on great moral issues, which should always be subject to a free vote".¹⁶

The Liberal Democrats have repeatedly argued that the Salisbury-Addison Convention no longer applies.¹⁷

NO MAJORITY SUPPORT FOR REDEFINING MARRIAGE

A huge amount of polling has been conducted by supporters and opponents of this policy. Before considering the numbers, a key factor to keep in mind is the atmosphere of intimidation. People feel under pressure to give a politically correct answer to pollsters, an answer which masks their true feelings.

A ComRes poll found 63 per cent agree that people are fearful of saying they oppose same-sex marriage.¹⁸ That's a huge number. Polling also found 38 per cent of people are

prepared to say opponents of same-sex marriage are “bigots” who should be “ignored”.¹⁹ This intimidation factor will skew the results of any poll. Chairman of ComRes, Andrew Hawkins, said the intimidation factor was so strong that “all polls overstate support and understate opposition” to same-sex marriage.²⁰

A House of Commons research paper published in January 2013 considered 16 polls conducted on the issue of same-sex marriage – ten showing greater support than opposition and six showing greater opposition than support. However, the paper notes that a straight support/oppose choice may mask support for a third option. The paper states: “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.” In all four polls that have offered people this choice, not a single one finds any majority support for same-sex marriage. At most, only 46 per cent support same-sex marriage and in three of the four polls there is more opposition than support for same-sex marriage.²¹

Regarding the wording of polls, a question which presents the issue of same-sex marriage in terms of ‘gay rights’ tends to solicit a slim majority in favour of the policy. However, this is disingenuous because all the legal rights of marriage already apply to same-sex couples through civil partnerships. When an accurate question is asked – one which says legal equality already exists – a majority of the public says keep marriage as it is. A ComRes poll found 70 per cent support for keeping marriage as it is, having previously explained that legal equality already exists through civil partnerships.²²

Polling of homosexual people themselves reveals that only a minority (39 per cent) believe same-sex marriage is a priority for their community.²³ Polling also shows 86 per cent of people agree that it is perfectly possible to respect others and defend traditional marriage at the same time.²⁴

In the ballot box, votes are anonymous and therefore a better indication of public attitudes. A ComRes poll which correctly predicted the UKIP surge at the local elections found that same-sex marriage was a key factor. All three main political parties lose support over the issue, but the Conservatives (26%) and Lib Dems (18%) lose most.²⁵ UKIP supports civil partnerships as a matter of equality, but rejects the redefinition of marriage. In the wake of UKIP’s astonishing local election results, election expert Professor John Curtice said UKIP has gained support from voters who are socially conservative on issues like gay marriage.²⁶

One thing is abundantly plain: there is no clear public consensus on this issue. The public is divided, and a close look at the polling strongly suggests they prefer marriage to stay as it is. It is simply wrong to press ahead with a monumental social change without broad public support – especially when the parties failed to mention it in their manifestos.

PUBLIC SECTOR EQUALITY DUTY

A) Public Sector employees

Under the Equality Act, public bodies have a positive duty to advance equality.²⁷ The Public Sector Equality Duty ("PSED") imposes an obligation on public authorities to have regard to the need to "foster good relations" and to "tackle prejudice".

This has implications for employees of public bodies.

Aidan O'Neill QC has confirmed that the PSED could be used by public authorities to dismiss an NHS chaplain who, in his role as vicar of a local parish church, preaches about the uniqueness of traditional marriage in a sermon.

And according to John Bowers QC, the PSED could be used by schools to require a teacher to teach material promoting gay rights, to which he has a conscientious objection.

B) Users of public services

Local authorities can use the PSED to affect decisions on access to public services. Aidan O'Neill QC has confirmed that the PSED could be used by public authorities to:

- terminate the use by a church of a local authority community centre because the church does not solemnise same sex marriages.
- refuse to register church premises for the solemnisation of opposite-sex marriages because the church does not want to be licensed for same-sex marriages.
- refuse prospective foster carer applications because the applicants believe marriage can only be between a man and a woman.

And according to John Bowers QC, the PSED could be used by schools

- to prevent schools promoting traditional marriage without similarly promoting same-sex marriage.
- to provide a legitimate basis for schools to endorse same-sex marriage as part of the curriculum, should they choose to do so.

Local authorities also control advertising on their buses, in their publications and on their poster hoardings. The PSED effectively gives a wide discretionary power to public authorities to censor public debate in the name of advancing equality. It also gives a legal basis to public authorities to actively advance their own partisan equality agendas, against those who do not share their vision. The Mayor of London recently banned some Christian adverts using the PSED because he said they were offensive. The basis of his decision was upheld by the High Court²⁸. But the Mayor had exercised no such scruples in seeking to ban a similar advert which was offensive to Christians. The Times ran an editorial against the Mayor's selective censorship, but the Mayor still got away with it.

IMPACT IN SCHOOLS

A) Teachers

The Public Sector Equality Duty applies to schools. John Bowers QC has given the opinion that the PSED could be used to prevent schools promoting traditional marriage without similarly promoting same-sex marriage, or to provide a legitimate basis for schools to endorse same-sex marriage as part of the curriculum, should they choose to do so. Under the same-sex marriage legislation, the civil liberty of teachers holding a traditional view of marriage will be particularly at risk.

Marriage routinely comes up in the school curriculum, for example in English or History. Since Clause 11 of the Bill envisages marriage being redefined for the purposes of all legislation, this extends to section 403 of the Education Act 1996, which provides for pupils to be taught about the importance of marriage within sex education.²⁹

All of this raises the inevitable question about what will happen to teachers who refuse to endorse same-sex marriage when required to by their school or local authority. This is a legitimate concern felt by many in the teaching profession: a representative poll of teachers found that 10% (equating to more than 40,000 teachers) “would probably refuse” to teach children about the importance of same-sex marriage if required to do so, and a further 17% would teach about its importance, “but would not be happy about it.” And 56% expressed concerns that colleagues who take a stance supporting traditional marriage could find that their professional career is damaged.³⁰

Indeed, some teachers have already come under pressure to endorse same-sex relationships and others fear that they may be compelled to do so if the Bill becomes law. One situation involved a primary school teacher who stopped reading a book endorsing same-sex relationships, *Tango Makes Three*, to her class because to express those views would be in conflict with her beliefs. When the headteacher discovered this, the teacher was later restricted from having her own class as the school policy would require teachers to promote homosexuality in the classroom, including the reading of such books. In Scotland a secondary school teacher was told that he would have to teach a relationships course promoting same-sex marriage ‘without exemptions or safeguards’ despite it contradicting his beliefs.³¹

Legal advice from John Bowers QC confirms those concerns: “If the Marriage Bill becomes law, schools could lawfully discipline a teacher who refused to teach materials endorsing same sex marriage.”³² As the Bill presently stands, teachers who refuse to endorse same-sex marriage will have no legal protection.

It is not at all clear whether “traditional marriage” would even be a belief that falls to be covered in employment law under the protected characteristic of religion and belief.

Even if belief in traditional marriage was covered, it could be easily trumped by the rights of a school or local authority that wants to promote same-sex marriage. This is the legal precedent from the European Court of Human Rights which recently declared it is lawful for a public authority to expect staff to act contrary to their beliefs about marriage, and lawful to dismiss those who resist.³³ It has been reported in the press that Education Secretary Michael Gove is concerned about the implications for teachers.³⁴ Senior figures in the DfE think the Government may be powerless to stop an extreme local authority disciplining a teacher who has a sincere conscientious objection to endorsing the redefinition of marriage. The Government has insisted teachers would never be expected to promote something that ran contrary to their beliefs and are at liberty to explain their own view in an "appropriate" way.³⁵

B) Parents and pupils

If marriage is redefined there would also be important implications for parents. Could parents have their children excused from lessons on same-sex marriage? There has been a growth of schools which take part in Lesbian and Gay History Month. There is no right of withdrawal from history lessons. The advice of leading human rights lawyer Aidan O'Neill QC is that European law would ultimately not support the right of parents to withdraw their children from lessons outside of sex education that endorse same-sex marriage.

CHAPLAINS

Many public sector chaplains are ministers in their local community. This gives them the experience which is necessary to discharge their chaplaincy roles. As public figures, they express views in sermons, in church newsletters and they naturally contribute to wider public discussion about religious and social matters. If marriage is redefined, chaplains are likely to be particularly vulnerable to claims by public bodies that they have breached equality and diversity codes. Those chaplains will no longer be able to defend themselves saying that their views are in line with marriage law.

A volunteer chaplain working for Strathclyde Police lost his role with the force in 2012 after he published on his private blog that he disagreed with same-sex marriage. The Rev Brian Ross, formerly a minister of the Church of Scotland, was told that his services were no longer required.

The Director of Human Resources at Strathclyde Police wrote to the Rev Brian Ross in August 2012 expressing concern that:

"you have made comments expressing your views on religious matters whilst you concurrently hold a role in an organisation that has to be recognised as neutral".³⁶

And a spokesman for Strathclyde Police told The Daily Telegraph in March this year:

“Whilst the force wholly respects the Rev Ross’s and, indeed any employees’ personally held political and religious beliefs, such views cannot be expressed publicly if representing the force, as it is by law an apolitical organisation with firmly embedded policies which embrace diversity and equality”.³⁷

Scottish Borders Council was recently accused of trying to edge out school chaplains, with its Deputy Leader wanting to bar chaplains who back traditional marriage from schools.³⁸ Scottish Borders Council Deputy Leader Catriona Bhatia raised concerns about chaplains who may be “anti-gay marriage”. She insisted that religions are entitled to their views about traditional marriage, but they should not be introduced in schools. This sort of attitude, in conjunction with the PSED, risks threatening the role of chaplains throughout the public sector.

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.

The Government actually said in the impact assessment to its consultation document that the terms “husband” and “wife” would have to be removed from official documents.³⁹ It now claims to have found a way to preserve the terms, albeit with new definitions. Under the Government plans there can be two husbands or two wives in a marriage. So instead of deleting husband and wife, the words will be redefined, as the Government’s Marriage (Same Sex Couples) Bill shows.⁴⁰

Legislation frequently uses terms such as husband (1003 times), wife (888), spouse (2740), or “husband and wife” (342).⁴¹ 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 phrase “husband and wife”.

Changing the language about marriage inevitably changes the language about parenthood. In some Canadian provinces and 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 “parent A” and “parent B”.⁴² 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.⁴³ 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”.⁴⁴

THE GREAT “MARRIAGE EVOLUTION”

Maria Miller makes the astonishing claim that: “Marriage is not static; it has evolved and Parliament has chosen to act over the centuries to make it fairer and more equal.”⁴⁵

But marriage as the union of one man and one woman has never changed in thousands of years! Issues such as property rights or the fashions of marriage ceremonies and wedding dresses have certainly changed, but the essential nature of marriage has not. This legislation creates ‘ungendered’ marriage, with two types of such marriage available: same-sex marriage and opposite-sex marriage. And, following a last minute deal with the Labour Party to save the Bill in the Commons, the legislation will also kick start the introduction of heterosexual civil partnerships following a consultation.

This has huge implications for society’s view of marriage.

Evidence shows that redefining marriage undermines support for marriage in wider society. In Spain, after same-sex marriage was introduced, marriages across the whole population plummeted by over 20% in the following six years.⁴⁶ The Netherlands also saw a significant fall in the marriage rate after marriage was redefined.⁴⁷

The Government’s Bill also undermines marriage because it sows the seeds for the eventual abolition of consummation and adultery from traditional marriage. This is because under the Bill a party to a same-sex marriage can only commit adultery with a person of the opposite sex.⁴⁸ Gay and straight marriage have a complete difference of treatment when it comes to adultery and there are no consummation provisions for gay marriage.⁴⁹ This creates an inherent instability in the law and is open to challenge. It will surely pave the way for the future complete abolition of consummation and adultery from the law of marriage.

HETEROSEXUAL CIVIL PARTNERSHIPS

Under the Bill homosexuals can either marry or enter into a civil partnership, whereas heterosexuals can only marry. The Government has faced criticism that the legislation creates more inequality than it remedies.

Conservative MP Tim Loughton, an opponent of gay marriage, tabled an amendment for the Report Stage to extend civil partnerships to heterosexuals. He insisted that it was not a wrecking amendment, but his colleagues didn’t see it that way. As the debate got closer Labour Party sources became ever more favourable to the amendment.

The Government had always strongly opposed extending civil partnerships to heterosexuals. In December 2012 Ministers said: “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.”⁵⁰

On 14 May 2013 Maria Miller told the Joint Committee on Human Rights: “We don’t feel there is either a necessity or a requirement to open up civil partnerships to heterosexual couples because there is no deficit there – there is no lack of an ability to be able to formalise a relationship in a legal way. It is already there for heterosexual couples. It’s called marriage.”⁵¹

Steve Webb MP, the Pensions Minister, added that this would cost £3-4 billion just for public service pensions alone.⁵²

Only two days after this on 16 May it seemed likely that Labour would back Mr Loughton, so the Government did another U-turn and conceded a review after five years of the Act which would consider extending civil partnerships to heterosexuals. Maria Miller duly tabled an amendment.

But five years was too long to wait for Yvette Cooper. On the Sunday night before the debate on the Monday a Labour source said the party would support the Loughton amendment which guaranteed immediate legalisation of heterosexual civil partnerships.⁵³

On the Monday morning it looked as though the Government faced certain defeat. The Government said that if the Loughton amendment was passed the Bill would be delayed until after the next election.

Yvette Cooper then responded by going on World at One and said Labour would not support Mr Loughton’s amendment. Instead they would table their own manuscript amendment requiring an immediate consultation on extending civil partnerships to heterosexuals.

As she opened the debate Maria Miller announced that she “was delighted to see the Labour party deciding to commit its support for this approach” and was “more than happy to accept the Opposition amendment”.⁵⁴ The Government would “proceed swiftly with the review of civil partnerships...we will certainly consider how we can proceed with a consultation speedily, given the strength of feeling.”⁵⁵

So after a two hour debate on a manuscript amendment the House agreed that there should be an immediate consultation on a £4 billion plan to extend civil partnerships to heterosexuals.

We have always said this Bill would lead to further developments which would undermine the place of marriage in society. We have been proved right. The introduction of civil partnerships for heterosexuals would create a two-tier system giving couples the option of ‘marriage-lite’. This Bill does not redefine marriage, rather the Bill wrecks it.

THE CONSEQUENCES OF REDEFINING MARRIAGE

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

Same-sex 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. The Government has decided to retain civil partnerships. So it is planning to introduce two legal options for homosexuals (civil partnerships and marriage), but only one for heterosexuals (namely marriage). And to avoid accusations of inequality, the Bill is to pave the way for heterosexual civil partnerships.

Even if the Government delayed implementation of these plans, civil partnerships for opposite-sex couples could come about through a legal challenge on human rights grounds. Peter Tatchell's 'Equal Love' campaign is already running a European court case on this issue.⁵⁶

Leading gay rights advocates have already admitted that opening up civil partnerships to heterosexuals would cost £5 billion.⁵⁷ 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. The Government has conceded it will cost £3-4 billion for tax payers to fund the extra costs for public service pensions. The Government has not given a figure for the cost of inheritance tax exemptions which will also apply.

There will be a price to pay for this policy that is more than merely financial. Many marriage counselling charities offer their services to the general public. If the Marriage (Same Sex Couples) Bill is passed, these charities will be forced to offer services to same-sex married couples or face closure. This is just like the Roman Catholic adoption agencies that were forced to close.

Marriage counselling charities may be safer if they restrict their services to people who share their theological beliefs about marriage. But those that offer public services will be right in the firing line of equality laws. So a Baptist Marriage Counselling charity would have to stop offering its services to the public and instead restrict it to Baptists. Charities that simply exist to educate or advance understanding of traditional marriage are less likely to be affected in this way.

So the legislation will also undermine marriage by closing down or hampering the work of marriage counselling charities.

MARRIAGE BY NUMBERS

- There are 24 million married people in the UK.⁵⁸
- Most people get married and most marriages last for life.⁵⁹
- The number of UK marriages in 2010 was 277,740. This was a rise of 4 per cent compared with 2009 when there were 267,898 marriages.⁶⁰
- The number of civil partnerships formed in the UK by same-sex couples was 6,795 in 2011. 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 2011, is 53,417.⁶¹

TRADITIONAL MARRIAGE BENEFITS CHILDREN

The Government is not in the marriage business to regulate love. The Government provides marriage licences because marriage is a public institution intended to provide a secure environment for the upbringing of children, and a legal underpinning to the sexual exclusivity of the couple. The law on adultery discourages husbands from fathering children with women other than their wives. In this way the law is protective for children even where a married couple cannot have children.

Marriage as an institution exists to maximise the likelihood that men commit to the women they are sleeping with and to the children they help to create. When a child is born, there is always a mother close by, but the question is whether a father is close by and for how long he will be involved in the life of that child. Marriage encourages responsibility and strengthens the family unit as a whole. Redefining marriage sends out the signal that fathers are optional. Marriage affirms that children need both a male and female role model. It is based on the complementary roles of men and women.

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.⁶²

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 become a drug addict, 50% more likely

to develop an alcohol problem, 40% more likely to develop serious debt problems and 35% more likely to experience unemployment/welfare dependency. And this does not even fully address the economic costs, or the effects on the physical and mental health of children.⁶³

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”.⁶⁴

A Government paper published last year 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.”⁶⁵

NO MATTER HOW MANY ‘LOCKS’ THEY HAVE, THE GOVERNMENT CAN’T PROTECT CHURCHES

The Government’s talk of a “quadruple lock” to protect religious organisations just shows how powerful this legislation must be. Not one, not two, not even three, but four levels of protection are thought necessary just to protect the liberty of churches that believe in traditional marriage. But can the Government really be sure it has protected all the legally vulnerable points?

The truth is that the Government can make all the promises it likes about protecting churches and ministers, but it’s a cheque that will bounce. The issue will inevitably end up at the European Court of Human Rights (ECtHR), which often takes a view at odds with that held by the UK Government. The ECtHR found at least one violation of the Convention in 271 out of 443 judgments relating to the UK between 1966 and 2010.⁶⁶

Even the Church of England ‘protection’ is challengeable. The Government has based its case on the ECtHR’s view of marriage remaining static. Yet the ECtHR’s existing position that there is no right to same-sex marriage rests on the current lack of “established consensus” in Europe.⁶⁷ This is obviously something that could change.

As mentioned above, Aidan O’Neill QC has confirmed that there are dangers enough under domestic legislation. If a church group that objects to same-sex marriage is hiring the

village hall, it would be lawful for a local council to ban them from using the facility, citing its Public Sector Equality Duty. When sexual orientation rights clash with religious liberty rights, the courts have tended to place more importance on the former rather than the latter.

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, couples will be prevented from fostering and groups may be prevented from hiring venues, all because of their views on traditional marriage.

A) United Kingdom

- 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.⁶⁸ Mr Smith's subsequent victory in the High Court came under contract law, and the court had no power to reinstate him and could only award him £98 for lost earnings.⁶⁹ He was advised that his beliefs about marriage were not afforded protection under discrimination law, so he would not have succeeded in an employment tribunal.
- All Roman Catholic adoption agencies have been closed down because of their views on traditional marriage.⁷⁰ The last operating Roman Catholic agency received notification from the Scottish charity regulator in January 2013 that it would lose its charitable status unless it scrapped its practice based on belief in traditional marriage.⁷¹ St Margaret's adoption agency requested a review of the Office of the Scottish Charity Regulator's decision, but after conducting a review the OSCR decision was upheld⁷² and the agency have now launched a further appeal to the Scottish Charities Appeal Panel.
- Islington Council effectively sacked registrar, Lillian Ladele, for requesting an accommodation of her conscientious objection to same-sex civil partnerships.⁷³ The European Court confirmed that a public authority can force employees to act against their beliefs about marriage, and sack any who resist.⁷⁴
- 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.⁷⁵
- Former leader of the SNP, Gordon Wilson, was voted off the board of Dundee Citizens Advice Bureau for supporting traditional marriage.⁷⁶

- The Archbishop of York, Dr John Sentamu, has been sent “abusive and threatening” racist emails after speaking out against same-sex marriage.⁷⁷
- David Burrowes MP received a death threat and hate mail after speaking out in support of traditional marriage.⁷⁸
- Arthur McGeorge, a bus driver, faced disciplinary action by his bosses simply because he shared a petition backing traditional marriage at work during his break time.⁷⁹
- The World Congress of Families had a conference about redefining marriage banned by the Law Society and the Queen Elizabeth II Conference Centre because discussing the subject of redefining marriage would be a breach of ‘diversity policies.’⁸⁰ The Christian Legal Centre are now contesting the breach of contract.

B) Around the World

- In the United States, the National Organization for Marriage (NOM) is suing the Internal Revenue Service (IRS) after the NOM tax return was leaked to its political rival, the Human Rights Campaign.⁸¹ A major political scandal has erupted in Washington after the IRS was caught targeting pro-family groups.⁸²
- Dr Angela McCaskill, a deaf diversity officer at Gallaudet University in Washington DC was suspended because she signed a petition saying voters should decide whether marriage should be redefined.⁸³
- In Washington state, a Christian florist who said that she could not provide flowers for a gay couple’s wedding because it was against her beliefs, is being sued by the couple involved.⁸⁴
- In Canada, sports journalist Damian Goddard was fired for tweeting in May 2011 that he supported traditional man-woman marriage. Sportsnet distanced itself from his tweet and announced his dismissal on 12 May 2011.⁸⁵
- In April 2013, New Zealand voted to redefine marriage, with the law taking effect from August of this year. Within weeks of the vote the charity Family First NZ that had campaigned against same-sex marriage was told by the New Zealand Charities Registration Board that it would lose its charitable status because its activities did not provide public benefit.⁸⁶

THE SLIPPERY SLOPE TO FURTHER REDEFINITIONS

The scope for one legislative development to lead to another, despite the reassurances of the government of the day, is illustrated by the civil partnership legislation. At the time of bringing those proposals forward, the Labour Government said it had no plans to

introduce same-sex marriage.⁸⁷ Yet just a few years later here we are facing precisely that prospect. Likewise, the coalition Government says it has no plans to change the criteria for determining who can form a marriage, including that marriage can be between two people only.⁸⁸ Such assurances give little comfort for the future.

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.⁸⁹ Marriage has always been understood in our common law as a lifelong, monogamous, sexually exclusive relationship. It has been limited to two persons because of the biological complementarity in the union of the sexes – inextricably linked to childbirth. If we redefine the gender of marriage to make it non-specific, why should the number be limited to two persons, or permanency or fidelity remain as the ideal?

Netherlands

In the Netherlands, same-sex marriage was introduced in 2001. Since then, three-way relationships have been given legal recognition through a “cohabitation agreement”.⁹⁰

Mexico City

Mexico City introduced same-sex marriage in 2009, and in 2011 a Bill was proposed allowing a temporary marriage contract for a minimum of two years. At the end of that time, instead of divorce the two-year marriage contract would simply not be renewed.⁹¹

Canada

Same-sex marriage legislation in 2005 replaced the term “natural parent” with “legal parent” in Canadian law.⁹² In January 2007 an Ontario appeal court ruled that a child can legally have three parents.⁹³ Furthermore, a poster ‘Love has no gender’ depicting a variety of relationships, including an image of one man and two women, and another image of one woman and two men has been used by schools in Toronto.⁹⁴ In British Columbia there are major attempts to legalise polygamy through the courts using the precedent of same-sex marriage.⁹⁵

Spain

Same-sex marriage was legalised in 2005. Children can now have birth certificates referring to “Progenitor A” and “Progenitor B” instead of father and mother.⁹⁶

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".⁹⁷

DRIVING A WEDGE BETWEEN CHURCH AND STATE

The very opening section of the Bill drives a wedge between church canon law and state law. The state and the established church will have separate definitions of marriage.⁹⁸ Given that the Church conducts weddings on behalf of the State, it's a recipe for disestablishment. That's why the Church of England called this proposal one of the greatest threats in its 500 year history.

The separate legal definition of marriage under the Government's plans for the Church of England is introduced because canon law would otherwise clash with the Bill. But the difference of treatment is also itself a ground for legal challenge to the Government's approach. There are serious doubts about whether this aspect of the "quadruple lock" can possibly stand scrutiny at the European level. The Government is creating huge instability at the heart of the UK constitution.

SAME-SEX MARRIAGE AROUND THE WORLD

Same-sex marriage is a very recent development. Before 2001 no country anywhere in the world allowed gay marriage. Since then, as has been shown, those countries that have redefined marriage have seen consequences ranging from falling marriage rates to censorship of, or litigation against, those who disagree. It has resulted in controversy, conflict, and the transformation of classrooms into culture war battlegrounds.

Only fourteen out of the 193 UN member countries have legalised same-sex marriage: Argentina, Belgium, Canada, Denmark, France, Iceland, Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden and Uruguay. It was recently reported that a decision of the Brazilian National Council of Justice had 'paved the way' for same-sex marriage in that country, but legislation has not been passed.⁹⁹

Same-sex marriages have also been introduced in the Mexican state of Quintana Roo, Mexico City, several Brazilian states, the US District of Columbia and nine US states (Connecticut, Iowa, Massachusetts, New Hampshire, New York, Vermont, Maryland, Maine and Washington State). Legislation will take effect in a further 3 US states (Delaware, Minnesota and Rhode Island) later in 2013.

In 31 out of 35 ballots on same-sex marriage in the United States the public backed traditional marriage.¹⁰⁰ The Parliament of Australia rejected same-sex marriage legislation in two votes in September 2012. Members of Parliament voted against redefining marriage by 98 votes to 42, and the following day the Senate defeated a similar proposal by 41 to 26.¹⁰¹ The Northern Ireland Assembly has also rejected redefining marriage: in October 2012 MLAs voted 50 to 45 against, then in April 2013 they repeated their decision with an increased majority, 53 to 42.

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 gave marriage and civil partnerships to same-sex couples, but only marriage to heterosexuals. That inequality is being addressed by proposals to introduce heterosexual civil partnerships. This in turn creates more inequality as it underlines the fact that long term housesharers, such as two sisters or a daughter that gives up her job to care for her elderly father, have none of these legal rights.

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.¹⁰² The UK Government intervened in the case, urging the Court to find in favour of Austria.¹⁰³ 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.”¹⁰⁴

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”.¹⁰⁵

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.¹⁰⁶

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MARRIAGE

Marriage is “the voluntary union for life of one man and one woman to the exclusion of all others.”¹⁰⁷ It is certainly about two people who love each other, but it is more than that. Marriage is bigger than the two individuals involved. It is much more than a close emotional relationship.

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 the 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 far-reaching consequences and causing huge upheaval.

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.¹⁰⁸ 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.¹⁰⁹ 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.