



MARRIAGE (SAME SEX COUPLES) BILL 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.

No popular support – proper polls show the public doesn't want it.

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

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

Undermine marriage – marriage has declined in nations that have redefined it.

Costly and complex – could set off a legal chain reaction eventually costing £5bn.

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.

INTRODUCTION

Marriage is “the voluntary union for life of one man and one woman to the exclusion of all others.”¹ 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 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.² 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.³ 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.⁴
- Most people get married and most marriages last for life.⁵
- 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.⁶
- 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 53,417.⁷

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.⁸ No one doubts his personal desire to see the law changed.⁹ 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, only three 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 whatever was said in this obscure document, 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.¹⁰

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."¹¹

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 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.

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.¹² Those who responded to the consultation, relying in good faith in 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.¹³

THE MAJORITY DON’T SUPPORT REDEFINING MARRIAGE

Since 2005 same-sex couples have been able to 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 that simply does not exist.¹⁴

A poll by YouGov for The Sunday Times, published on 11 March 2012, found that 32% opposed same-sex marriage whilst supporting civil partnerships and an additional 15% opposed both.¹⁵ So 47% opposed gay marriage with 43% supporting it and 10% saying they don’t know.

ComRes online polls for the Coalition for Marriage conducted in September 2012 and January 2013 both found that 51% of respondents believed that marriage should continue to be defined as a life-long exclusive commitment between a man and a woman.¹⁶ When

respondents are made aware of the existence of civil partnerships, the figure increases. A ComRes online poll for Catholic Voices released on 8 March 2012 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).¹⁷ Both these polls had relatively large samples (n=2,000).

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

IMPACT IN SCHOOLS

A) Teachers

Amid all the talk of 'quadruple locks' for churches, the real danger has been missed. The Government's Bill includes no protection for individuals with conscientious objection to the redefinition of marriage. Those in the public sector, like teachers, will be particularly at risk.

Marriage routinely comes up in the school curriculum, for example in English or History. In addition, schools are required to teach pupils about the importance of marriage as part of sex education.¹⁸ 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.

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.¹⁹ It has been reported in the press that Education Secretary Michael Gove is concerned about the implications for teachers.²⁰ 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.

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? 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 curriculum lessons that endorse same-sex 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.

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.²¹ 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.²²

Legislation frequently uses terms such as husband (1003 times), wife (888), spouse (2740), or “husband and wife” (342).²³ 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”.

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”.²⁴ 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.²⁵ 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”.²⁶

UNDERMINING MARRIAGE

For the first time, the law is going to change the essential nature of marriage.

Maria Miller has argued that: “Marriage is not static; it has evolved and Parliament has chosen to act over the centuries to make it fairer and more equal.”²⁷

But marriage as the union of one man and one woman has never changed in thousands of years. Issues such as property rights or where ceremonies could take place have changed, but the essential nature of marriage has not. This legislation would create ‘ungendered’ marriage, with two types of such marriage available: same-sex marriage, or opposite-sex marriage. This will inevitably have 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.²⁸ The Netherlands also saw a significant fall in the marriage rate after marriage was redefined.²⁹

The Marriage (Same Sex Couples) Bill provides no protection for marriage counselling organisations that believe in traditional marriage. Under equality laws they will have to abandon their beliefs about marriage or close down altogether. Either way, it deprives society of a means of support for marriage, further undermining the institution.

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.³⁰ Gay and straight marriage have a complete difference of treatment when it comes to adultery and there are no consummation provisions for gay marriage.³¹ 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.

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. 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). 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.³²

If civil partnerships become open to heterosexuals and marriage open to same-sex couples then even the leading gay rights advocates admit this would cost £5 billion.³³ 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.³⁴

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.³⁵

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".³⁶

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."³⁷

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 2010.³⁸

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.³⁹ This is obviously something that could change.

There are dangers enough under domestic legislation. The Equality Act puts public authorities under a legal duty to promote equality, and that applies to how they administer the use of public facilities. 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. This has been confirmed by leading human rights lawyer, Aidan O'Neill QC. 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 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.⁴⁰ 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.⁴¹ 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.
- Islington Council effectively sacked registrar, Lillian Ladele, for requesting an accommodation of her conscientious objection to same-sex civil partnerships.⁴² The European Court confirmed that a public authority can force employees to act against their beliefs about marriage, and sack any who resist.⁴³
- 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.⁴⁴

- All Roman Catholic adoption agencies have been closed down because of their views on traditional marriage.⁴⁵ The last operating Roman Catholic agency received notification from the Scottish charity regulator in the last few weeks that it will lose its charitable status unless it compromises its beliefs on marriage.⁴⁶
- Former leader of the SNP, Gordon Wilson, was voted off the board of Dundee Citizens Advice Bureau for supporting traditional marriage.⁴⁷
- The Archbishop of York, Dr John Sentamu, has been sent “abusive and threatening” racist emails after speaking out against same-sex marriage.⁴⁸
- David Burrowes MP received a death threat and hate mail after speaking out in support of traditional marriage.⁴⁹

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.⁵⁰ 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.⁵¹ 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.⁵²

Netherlands

In Holland, same-sex marriage was introduced in 2001. Since then, three-way relationships have been given legal recognition through a “cohabitation agreement”.⁵³

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.⁵⁴

Canada

Same-sex marriage legislation in 2005 replaced the term “natural parent” with “legal parent” in Canadian law.⁵⁵ In January 2007 an Ontario appeal court ruled that a child can legally have three parents.⁵⁶ In British Columbia there are major attempts to legalise polygamy through the courts using the precedent of same-sex marriage.⁵⁷

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.⁵⁸

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".⁵⁹

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.⁶⁰ 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

Only eleven out of the 193 UN member countries have legalised same-sex marriage: Argentina, Belgium, Canada, Denmark, 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.⁶¹

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.⁶² The UK Government intervened in the case, urging the Court to find in favour of Austria.⁶³ 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."⁶⁴

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".⁶⁵

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.⁶⁶

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