

Marriage (Same-Sex Couples) Bill

Commons Report and Third Reading Briefing

16th May 2013

The House of Commons will consider the Marriage (Same-Sex Couples) Bill at Report Stage and Third Reading on Monday 20th and Tuesday 21st May.

A Church of England briefing for MPs in advance of the Bill's Second Reading was published in February. That briefing summarised the principled reasons why the Church could not support the Bill and included a detailed Q&A on some of the more commonly asked questions (and misconceptions) about the impact of the legislation on the Church of England. It can be seen [here](#).

This briefing should be read alongside the document produced for Second Reading and focuses on some of the issues that are likely to arise during debate on Report and Third Reading.

Summary

The Church of England cannot support the Bill, because of its concern for the uncertain and unforeseen consequences for wider society and the common good, when marriage is redefined in gender-neutral terms.

We are grateful for the positive way in which the Government has sought to engage with the Church of England on the detail of the Bill prior to Report and Third Reading.

We do not doubt the Government's good intentions in seeking to leave each church and faith to reach its own view on same-sex marriage and offering provisions to protect them from discrimination challenges. **The 'quadruple lock' does, in our view, achieve the Government's policy intentions in this area and we believe it is essential that the various locks in the Bill are preserved.** The Church of England, whose clergy solemnize around a quarter of all marriages in England, has not sought or been granted any greater safeguards in substance than those provided for other Churches and faiths.

In our Second Reading briefing we said:

“The Church of England recognises the evident growth in openness to and understanding of same-sex relations in wider society. Within the membership of the Church there are a variety of views about the ethics of such relations, with a new

appreciation of the need for and value of faithful and committed lifelong relationships recognised by civil partnerships.”

“Civil partnerships have proved themselves as an important way to address past inequalities faced by LGBT people and already confer the same rights as marriage. To apply uniformity of treatment to objectively different sorts of relationship – as illustrated by the remaining unanswered questions about consummation and adultery – is an unwise way of promoting LGBT equality.”

“The continuing uncertainty about teachers, the position of others holding traditional views of marriage working in public service delivery, and the risk of challenges to churches in the European courts despite the protections provided, suggest that if the legislation becomes law it will be the focus for a series of continued legal disputes for years to come.”

Those concerns are now the subject of several amendments at Report and Third Reading.

The following commentary does not address specific amendments, but is a guide to Church of England concerns on the presenting issues.

Teachers and Guidance to Schools on SRE

The Secretary of State for Education has a duty, under Section 403 of the Education Act 1996, to issue guidance so that pupils in maintained schools “*learn the nature of marriage and its importance for family life and the bringing up of children*”. The governing bodies and head teachers of maintained schools are required to ‘have regard’ to this guidance when developing their policy for the provision of Sex and Relationships Education (SRE). Academies are also required to have regard to the guidance.

Section 1.21 of the current guidance states [emphasis added] that “*Within the context of talking about relationships, **children should be taught about the nature of marriage** and its importance for family life and for bringing up children. The Government recognises that there are strong and mutually supportive relationships outside marriage. Therefore, **children should learn the significance of marriage and stable relationships as key building blocks of community and society.** Teaching in this area needs to be sensitive so as not to stigmatise children on the basis of their home circumstances.*”

The guidance also states at Section 1.7 that “*Schools of a particular religious ethos may choose to reflect that in their sex and relationship education policy.*”

Whilst Church of England schools will fulfil the duty to teach about the factual nature of marriage in its new legally redefined form, there is residual unclarity over how that will interact with the continuing need for schools to reflect their religious ethos in their SRE policies. There is also at present nothing to prevent future Secretaries of State withdrawing Section 1.7 of the guidance, or amending the guidance as it currently stands.

We believe therefore that in order to ensure that schools can continue to teach an understanding of marriage that is consistent with their religious foundations, the Marriage (Same-Sex Couples) Bill should amend the Education Act 1996 to ensure that any guidance issued by the Secretary of State under this clause must take account of the religious character of the school.

Freedom of Speech & Conscience Clauses

The reasonable expression of opinions or beliefs on the nature of marriage ought not, in our view, to be the subject of claims against individuals under existing discrimination or harassment provisions in the Equality Act 2010. Some recent high profile cases have highlighted where there is potential for risk in a workplace context.

If an amendment to the Equality Act were introduced to put beyond doubt that the expression by a person of an opinion or belief about traditional marriage did not *of itself* amount to discriminating or harassing another, then this would provide reassurance and a degree of legal protection for both employers and employees who express their views in a reasonable way.

There is merit in also considering amendments to section 149 of the Equality Act, to ensure that the public sector equality duty is widened to give greater accommodation to those working in and with public authorities who hold to a traditional view of marriage.

We also believe that consideration should be given to limited measures to enable reasonable accommodation for marriage registrars who, on grounds of religious conscience, would not wish to conduct same-sex marriages.

Serious consideration should be given to introducing a requirement for registration authorities to consider requests by registrars not to perform same-sex marriages, provided that there are sufficient marriage registrars in their area to carry out the relevant functions. We do not believe it would be acceptable for marriage registrars who are in post prior to the Bill's enactment to face disciplinary actions or redundancy (voluntary or involuntary) simply as a result of their conscientious views on marriage.

Opposite-Sex Civil Partnerships

We agree with the Government's view that the Bill should not be amended to introduce an option of civil partnerships for couples of the opposite sex.

We believe that this would introduce further confusion about the place of marriage in society. We remain unconvinced that the introduction of such an option would satisfy a genuine and widespread public need, other than for those who pursue 'equality' as an abstract concept. There has been little public evidence to suggest that significant numbers of opposite-sex couples who choose not to marry would opt instead for a civil partnership. We are not convinced that any clear new social good is created by this further innovation in civil partnerships and therefore they are best left as they are

at a time when considerable uncertainty is being caused by the fundamental change in the nature of marriage.

In our submission to the Government's consultation on the Bill in June 2012 (available [here](#)), we acknowledged that there is an inherent illogicality in introducing gender-neutral marriage whilst retaining same-sex civil partnerships.

“It is very doubtful whether the proposed continued limitation of civil partnerships to same-sex couples would withstand legal challenge, were the main proposal concerning the redefinition of marriage to be implemented.”

At the time this formed part of our wider concerns about anomalies created by the proposals to legislate. We do not believe however that introducing opposite-sex civil partnerships by amendment to the Bill to remedy what is largely a conceptual anomaly is in the broader interests of strengthening marriage as an institution. For the avoidance of doubt, this view is endorsed by the Archbishop of Canterbury.

We acknowledge that the availability of same-sex civil partnerships has continuing value for gay and lesbian people, including those gay and lesbian Christians who accept the Church's doctrine of marriage.

Humanist Celebrants

We agree with the Government's view that the Bill should not be amended to introduce a celebrant-based system for marriages in England and Wales, to enable Humanists (amongst others) to conduct weddings.

Unlike Scotland, where there is a celebrant based system for conducting marriages, in England and Wales the system is based on approved (religious and civil) premises. Running two systems in parallel would create anomalies and oddities. If there were a desire to explore changing the whole system to one based on celebrants rather than premises - and the Church of England is doubtful of the need for that - that would need a much wider review than arises from this Bill.

If an amendment were passed to make such a change it would create a situation where Humanist and other celebrants were accorded unique status and privileges (for example as to where marriages could take place) compared to those of existing ministers and civil registrars. It would also create uncertainty around the current system of how marriages are legally registered and monitored.

For further information, copies of previous briefings, or to arrange a meeting to discuss any detailed concerns, please contact Richard Chapman, Parliamentary Secretary, on 020 7898 1438 / richard.chapman@churchofengland.org

This paper was produced by the Parliamentary Unit, Mission and Public Affairs Division and Legal Office of the Church of England, at Church House, Westminster.

It draws on the formal position on same-sex marriage as set out in the official Church of England submission to the Government's consultation of June 2012, which was agreed by the Archbishops of Canterbury and York, the House of Bishops and the Archbishops' Council.