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Exposing the government's same-sex marriage 'mythbuster'

Last week the Government Equalities Office produced a 'mythbuster' guide supposedly refuting concerns about same-sex marriage. Here are the realities that lie behind this 'mythbusting'.

Myth 1: *Allowing same-sex marriage will destroy the institution of marriage.*

The government say ... same-sex marriage will strengthen the institution of marriage.

Reality: Evidence from countries that have introduced same-sex marriage (including Spain and the Netherlands) suggests that marriage as an institution is continuing to decline. This decline is largely attributable to redefinition affecting the unique nature of marriage as an aspiration for young people.

Myth 2: *Marriage has not changed in hundreds of years.*

The government say ... that marriage has not remained a static institution and should evolve with the times by opening it up to same-sex couples and consequently strengthen it for everyone.

Reality: Marriage has evolved to keep pace with societal change over the centuries, but the institution has always been within the clear category boundary of male and female relationships. To redefine the essential nature of marriage to include same-sex relationships would constitute a revolution, not an evolution.

Myth 3: *Religious organisations or ministers of religion will be forced to conduct same-sex marriages.*

The government say ... this will not happen due to proposed legal protections.

Reality: While legal protections can be delivered by the government, the security of such guarantees clearly cannot be relied on in the future. In Denmark, churches are being forced to conduct same-sex marriages, shortly after guarantees of protection were given.

Myth 4: *The European Court of Human Rights will force religious organisations to conduct same-sex marriages.*

The government say ... that Europe will continue to allow member states to decide.

Reality: Protections for religious organisations will only hold as long as the European Court does not itself accept a redefinition of marriage. Given likely accumulation of cases of precedence to recognise same-sex marriage in member states (and to see any deviations from 'marriage equality' as discriminatory) and the ongoing questions about the UK's relationship to the EU, it is clear that any guarantees of legal protection are limited in scope and at best short-term.

Myth 5: *The Church of England and Wales have been banned by the government from conducting same-sex marriages.*

The government say ... this is not true. Special measures in the Bill were necessary in view of the Church's unique legal position.

Reality: The government is right. But this is not the point. The requirement of clergy to conduct marriages leaves these churches extremely vulnerable to legal challenge. Legal advice confirms that maintaining the illegality of same-sex marriages carried out by clergy will eminently be open to challenge from a human rights perspective in Strasbourg. The legal integrity of the special measures is highly dubious.

Myth 6: *The Church of England and the Church in Wales are being given extra protections.*

The government say ... the Bill contains special measures in view of the unique legal position of these churches. They are not being afforded any extra protections compared to other religious bodies.

Reality: This is factual, but the real point is being missed (see Myth 5). The question also remains whether protection for non-established churches that are licensed for marriages by the state is as watertight as the government claims. While under the current Bill such churches would be able to refrain from opting in to conduct same-sex marriages, legal developments in the European Court of Human Rights and future changes in the law to prevent such 'discrimination' are highly likely.

Myth 7: *The Church of England and the Church in Wales were not consulted properly.*

The government say ... this is not true. During the consultation on the Bill and the drafting of the legislation the government conducted numerous detailed discussions with all stakeholders.

Reality: The government is being disingenuous. The 'listening exercise' prior to the consultation took no account of scale and was disproportionately biased towards the few minority groups supporting redefinition. Religious groups and others opposing redefinition were presented with proposals at a point when most of the key decisions had already been made, and their objections were dismissed. Indeed, when the government made a statement on the (now discredited) findings of the consultation process in December, the notable response of senior Anglican clergy was that of surprise.

Myth 8: *Teachers will have to promote same-sex marriage to pupils in sex and relationships education even if it is against their beliefs. Teachers who oppose same-sex marriage will be sacked from their jobs.*

The government say ... this is not true.

Reality: Senior sources at the Department for Education have conceded that the UK is not 'in control' of legal protections in the education system and that European judges will have the final say. Legal advice confirms that the law will require that children learn about gay marriage in sex education lessons. This is because Section 403(1A)(a) of the Education Act 1996 imposes a duty on the Secretary of State "to issue guidance" ensuring that pupils "learn the nature of marriage and its importance for family life and the bringing up of children". If marriage is redefined then, as a new social orthodoxy it must be taught and promoted in sex education as being important for family life and the bringing up of children. Reading material also in the National Curriculum will be required to support this perspective. The law will not be able to permit refusals to teach this material or parents to withdraw their children from classes.

Myth 9: *There is no difference between civil partnerships and marriage.*

The government say ... they acknowledge legal differences are few. But perceptions are different.

Reality: There is no difference. Civil partnerships confer all the rights and benefits of marriage. No injustices will be remedied by the additional legislation. However, by proposing to allow homosexual couples to have both civil partnerships and marriage, heterosexual couples will clearly be discriminated against by being denied civil partnership status. This situation would be challenged, and it is estimated that the extension of civil partnerships to heterosexuals would cost in the region of £5 billion.

Myth 10: *You are abolishing the terms 'husband', 'wife', 'mother' and 'father'.*

The government say ... this is not true.

Reality: Retaining the existing terms is impossible, or at least with any integrity to their meaning. It will lead to children having two mothers or two fathers, and the terms 'husband' and 'wife' would become gender-neutral in themselves and therefore ambiguous. As the experience of countries such as Canada shows, the redefinition of marriage to make it gender-neutral (and adult-centred) means that all state communications will be required to adopt the most inclusive language possible. In this context, over time the legal and coercive power of the state acts to enforce the new social orthodoxy against those who refuse to recognise the redefinition. In anticipation of a legal change, some NHS guidelines are already promoting a gender-neutral discourse.

Myth 11: *Not introducing civil partnerships for opposite-sex couples is unfair.*

The government say ... this is not true. It is unfair that same-sex couples are excluded from marriage.

Reality: Same-sex couples are excluded from marriage and this is not unfair because sameness does not mean equality, and difference is appropriate in this context. Additionally, the Bill proposes the creation of two distinct forms of marriage. Laws relating to consummation and adultery will not apply for same-sex couples. Only infidelity between a man and a woman would constitute adultery. So, same-sex couples would be granted the appearance of marriage, but they would not be able to divorce their partner on the basis of adultery - unless they cheated with somebody of the opposite sex. The Bill also re-states that if a heterosexual person discovered their husband or wife had a lover of the same-sex, they could not accuse the unfaithful partner of adultery in a divorce court. This means that the supposed 'equal marriage' for same-sex couples is not equal at all because issues of consummation and adultery are intrinsic to traditional marriage, while in same-sex marriage they are not. In this context, the likely outcome will be to abolish consummation and adultery for traditional marriage as well - on grounds of equality. Crucially, same-sex marriages will, in effect, be legal open marriages – with an allowance for as many sexual partners as one chooses, as long as they are all of the same sex - without actually ever committing adultery. This completely alters the meaning of marriage by removing the core component of sexual faithfulness. It would not create equality, but two divisive and unequal forms of marriage which will be subject to manifold legal challenges.

Myth 12: *This is the thin edge of the wedge – further changes to the law to enable other groups to marry are likely.*

The government say ... that this just won't happen!

Reality: If marriage is redefined to become simply a loving commitment between consenting adults then arguments for the legal recognition of other forms of relationship are likely. The experience of other countries has shown that, by rendering the statutory form of this social institution subject to market choices, the privatisation of marriage draws new relational claims for validity. Shortly after introducing same-sex marriage Mexico City is now considering two-year fixed-term marriages. Following the recognition of same-sex marriage in Brazil a recent court ruling has stated that three-way relationships must also be accepted. There is a public campaign and already one case to legalise polygamy in Canada. In the UK, the slippery slope argument is most clearly made by reference to the introduction of civil partnerships in 2005. Throughout the parliamentary debate, the introduction was premised on guarantees that civil partnerships were not a stepping stone toward redefining marriage – which of course was a myth.

Myth 13: *You did not take into account the large number of petitions received opposing a change in the law. The government has no mandate to introduce same-sex marriage. The Bill is being rushed through parliament and has not been properly thought through. Polling shows that the public is not supportive of this policy.*

The government say ... this is untrue. The government consulted. The consultation was not asking *whether* the law should be changed and the Conservative party did publish a paper alongside its 2010 manifesto saying it would consider the case to allow civil partnerships to be classified as marriage. The government's own poll showed that 53 per cent of the public were supportive of same-sex marriage.

Reality: The government is being disingenuous. The country has not voted for this Bill. There is no doubt that there is no democratic mandate to redefine marriage and that the public are overwhelmingly against it. By not publishing plans to redefine marriage in its manifesto, the minority of the Conservative Party who are in favour of same-sex marriage suppressed their intentions and avoided democratic scrutiny. The 'consultation' process was discredited because the questions were disproportionately structured to aid supporting submissions, and after giving assurances of inclusion, in the final analysis the process also discounted the 500,000 submissions from the Coalition for Marriage. This entirely distorted the conclusion. Contrary to the claim that 53 per cent of respondents were in favour of the proposals, a much larger proportion were against. The government cites a poll showing public support for introducing same-sex marriage, but other polls show that support for retaining the current definition of marriage is backed by 70 per cent of the public. Even within the gay community polling shows that less than 40 per cent see this as a priority, with only three per cent of gay people stating that they would enter a same-sex marriage. The government has indicated that it will also subject the Bill to a timetabling motion thereby restricting the amount of time allowed for parliamentary scrutiny.

Myth 14: *People will be sacked if they criticise same-sex marriage at work. The four European Court cases show that people are not free to follow their beliefs at work. The Trafford Housing case with Adrian Smith shows that people can be sacked because of their religious beliefs.*

The government say ... this is not true. Adrian Smith won his case. The Strasbourg decisions upheld freedom of belief.

Reality: The European Court ruling against Lilian Ladele showed that people who believe in traditional marriage can legally be forced out of their jobs, and that appeals to Europe for protection are illusory. The cases highlight the hierarchy of human rights that now exists in UK law. In enforcing the Equality Act, the Equality and Human Rights Commission confirms that an employer "may legitimately refuse to accommodate an individual's religious beliefs where such accommodation would involve discrimination on the basis of other characteristics – in other words, in any clash of rights, religion must always give way. The reality is that there is now little employment protection for workers, especially in the public sector, including NHS employees, teachers, members of the armed forces and prison chaplains. Significantly, the draft Bill does not provide for the specific employment protection of individual or group (public – non-religious) expression that marriage can only be between a man and a woman. In addition, without specific protection of the belief in traditional marriage, marriage charities such as those that provide marriage advice and counselling, faith-based or otherwise, would be closed down on account of discrimination unless they acknowledge and provide for same-sex marriage. It is also likely that, unless the belief in heterosexual marriage were itself expressly protected under the law, the Charity Commission would encounter difficulties in registering charitable aims that included the specific promotion of heterosexual marriage.

Myth 15: *Local councils will stop giving religious groups contracts or letting them use their facilities if they refuse to conduct same-sex marriages.*

The government say ... this is not true. It would be unlawful.

Reality: Quite apart from the residual barriers encountered by faith groups because of religious illiteracy or ideological opposition within local authorities emanating from their public sector equality duty, as the experience of Canada shows, if marriage is redefined, the legal and coercive power of the state will increasingly require compliance with the new social orthodoxy. Although legal redress may be technically possible in cases where use of facilities and services are challenged, the reality is that for small faith groups the cost of bringing them to court is prohibitive where they are highly likely to lose anyway.