

# Please let the government know your views on same-sex marriage by 14 June

## Background

The Government Equalities Office is consulting on changing the law to permit same-sex couples to marry. The review period will conclude on **Thursday 14 June**.

The consultation was announced by the Minister for Equality, Lynne Featherstone, at the Liberal Democrat conference in September 2011. She stated that the consultation would be about 'how to implement equal civil marriage for same-sex couples'.<sup>1</sup> Two weeks later, at the Conservative Party conference, the Prime Minister added his personal support for the proposal, famously stating: *'I don't support gay marriage despite being a Conservative. I support gay marriage because I'm a Conservative.'*<sup>2</sup>

In response to pressure from the Coalition for Marriage, the government is asking the public whether they agree or disagree with the plan to introduce same-sex marriage. This is a question that the government originally said would not be asked.

Nevertheless, the fact that the consultation paper is framed in terms of 'how' to legislate for same-sex marriage suggests that the government remains determined to redefine marriage, regardless of what the public thinks. It is therefore vitally important that as many people as possible respond to this consultation in order to send out a very clear signal to the government that its proposals do not have widespread public support.

## What is the government proposing?

**The government is proposing to change the definition of marriage** in order to allow same-sex couples to marry by means of a civil marriage ceremony. It is also planning to permit same-sex couples in a civil partnership to convert their civil partnership into a marriage.

However, the consultation paper does not come clean about what the government is planning to do. Instead of admitting that its plans involve changing the meaning of marriage, the government refers 14 times to an intention to 'lift the ban' on same-sex marriage. But in reality, there is no more a ban on same-sex marriage than there is a ban on two-storey bungalows or three-wheeled bicycles! You can't ban something that, by definition, cannot exist, and marriage is defined as the union of one man and one woman.

### All marriages would be affected

The government states that it has no plans to change the law to allow same-sex couples to marry by means of a religious ceremony and refers to 'civil marriage' and 'religious marriage' as though they were two different entities. But in reality, the law draws no distinction between different types of marriage on the basis of whether or not they were entered into in the context of a religious ceremony. A marriage can be formed in a religious place of worship with religious words

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<sup>1</sup> Lynne Featherstone, Speech at Liberal Democrat Party conference, 17 September 2011.

<sup>2</sup> David Cameron, Speech at Conservative Party conference, 5 October 2011.

and ceremonies, or it can be formed in a non-religious setting without any of the trappings of religion. But either way, the couple concerned are entering the one institution of marriage.

The consultation paper states that: 'The government is not seeking to change how religious organisations define religious marriage.' That's perfectly true, since there is no separate legal definition of religious marriage. But it is a misleading statement because what the government is doing goes much further. It is proposing to change how **all of us** define marriage – whether we subscribe to a religious faith or not. If the government succeeds with its plans, marriage will no longer be defined as the union of a man and a woman, but the union of two persons of either sex.

## Why does the government want to redefine marriage?

**The main reason advanced for the proposal to introduce same-sex marriage is that it is a matter of equality.** However, there are a number of significant differences between same-sex relationships and the marriage of a man and woman. The following are given as examples of some of the differences:

- It takes a man and a woman to produce a child. A same-sex couple cannot create a new life.
- Consummation and adultery are clearly defined in relation to marriage, but such definitions are lacking with regard to same-sex relationships. The consultation document recognises this fact, but proposes to leave it to the courts to define over time what constitutes consummation and adultery in a same-sex marriage.
- Marriage between a man and a woman is defined as an exclusive relationship. Adultery is generally regarded as a serious betrayal of trust and constitutes a ground for divorce. However, homosexual academics acknowledge that same-sex relationships are characterised by a greater 'openness'. For example, the leading homosexual intellectual, Andrew Sullivan, writes that among homosexuals, 'there is more likely to be greater understanding of the need for extramarital outlets between two men than between a man and a woman'.<sup>3</sup>
- The consultation document proceeds on the assumption that 'the personal commitment made by same-sex couples when they enter a civil partnership is no different to the commitment made by opposite-sex couples when they enter into a marriage'.<sup>4</sup> However, this is not true as a matter of fact. Marriage is defined as a lifelong union and contracted by means of spoken vows, whereas a civil partnership is simply defined as 'a relationship between two people of the same sex'<sup>5</sup> and is formed by merely signing a document.

The government's appeal to equality is flawed because it fails to recognise that a same-sex relationship cannot be equivalent to the marriage of a man and a woman.

### The equality myth

Even on its own terms, what the government is proposing would not result in a situation of complete parity between same-sex and opposite-sex couples:

- There would be a separate and unique institution for same-sex couples, but there would not be a separate and unique institution for opposite-sex couples. While same-sex couples would have the choice of a civil partnership or a marriage, opposite-sex couples would not have the option of a civil partnership.

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<sup>3</sup> Andrew Sullivan, *Virtually Normal*, Picador, 1996, p.202.

<sup>4</sup> Government Equalities Office, *Equal civil marriage: a consultation*, Ministerial Foreword.

<sup>5</sup> Civil Partnership Act 2004, s1.

- While opposite-sex couples would have the option of a wedding service in a place of religious worship with religious words and ceremonies, same-sex couples could only have a civil ceremony.
- Same-sex couples in a civil partnership would be able to marry without taking any public vows or being required to have any form of marriage ceremony simply by 'converting' their existing civil partnership by means of a paper exercise that the government calls a 'formality'.

The reason the consultation paper gives for retaining civil partnerships as they are is that they are 'an established mechanism to recognise same-sex relationships'. However, the document does not apply the same reasoning for keeping marriage as an exclusively heterosexual institution. If civil partnerships have acquired protected status after less than a decade, there is an infinitely stronger case for protecting marriage and recognising it as 'an established mechanism to recognise opposite-sex relationships'.

## Why redefine marriage now?

Good question! Same-sex marriage did not appear in the manifesto of any of the major parties prior to the 2010 General Election and it did not feature in the Coalition Agreement. Two days before the General Election, the Conservative Party published a 'Contract for Equalities' in which it stated it would 'consider the case for changing the law to allow civil partnerships to be called and classified as marriage'.<sup>6</sup> However, this did not form part of its manifesto and neither did it commit a Conservative government to legislating for same-sex marriage; it merely said it would 'consider the case'.

The impact assessment attached to the consultation paper states that: 'The government has decided to act now, as we believe the society is now ready to undertake this change.'

According to the Home Secretary, Theresa May and the Minister for Equality, Lynne Featherstone, a listening exercise on allowing civil partnerships to take place on religious premises during 2010 produced representations calling for same-sex marriage. The Home Office was persuaded by the argument that 'having two separate provisions for same-sex and opposite-sex couples perpetuates misconceptions and discrimination' and concluded that it was not acceptable to deny same-sex couples the ability to be married and say that they are married.

## Why does it matter?

The government's proposals would have far-reaching implications, including the following:

- They would change the definition of marriage for everyone. Marriage is defined in law as the voluntary union for life of one man and one woman to the exclusion of all others. However, under the government's proposals that would change, and marriage would be redefined as the union of two persons of either sex.
- They would communicate the message that there is nothing unique about a marriage between a man and a woman, and that the relationship between two people of the same sex is of equal value to society.

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<sup>6</sup> Conservative Party, *A Contract for Equalities*, May 2010.

- They would involve removing the terms 'husband' and 'wife' from official data held by the immigration and tax authorities.<sup>7</sup>
- They would require a massive rewriting of our national laws and lead to the obliteration of vast amounts of our cultural and legal heritage. The word 'marriage' alone appears 3,258 times in UK legislation, and there are further references to 'husband', 'wife', 'mother' and 'father', all of which would need to be reviewed and amended.
- The lifelong union of one man and one woman would no longer have a unique place and status in law. It would be bracketed with same-sex relationships which are unable to produce children and which have not achieved all the social benefits that have been associated with marriage throughout history and down to the present day.

## Would same-sex marriage mark a final destination or a staging-post on a longer journey?

The consultation paper states that as a result of a listening exercise undertaken by the government in 2010, 'it became clear that the immediate issue that needed consideration was enabling same-sex couples to have a civil marriage'. This clearly intimates that further issues may remain to be addressed at a future date, and during an interview on BBC Radio 5 Live, the Minister for Equality stated that 'it may be that [the issue of same-sex marriage in a place of religious worship] comes back another day'.<sup>8</sup>

It is inevitable that there would be legal challenges to the government's proposal not to permit same-sex marriage by means of a religious ceremony, and the government appears to acknowledge that this would be the case. However, it insists that 'no religious organisation, premises, or leader would face a *successful* legal challenge' (emphasis added) and, perhaps with less certainty, states that 'no one *should* face successful legal action for hate speech or discrimination if they preach their belief that marriage should only be between a man and a woman' (emphasis added).

In the view of some human rights lawyers, the government's assurances are highly questionable. Although the European Court of Human Rights has ruled that states are under no obligation to legalise same sex marriage, there is a distinct possibility that if same-sex marriage is legalised in the UK it could be unlawful for the government to prevent such marriages taking place on religious premises.<sup>9</sup>

### The experience of other countries

Ten countries, together with Mexico City and six US states have already legislated for same-sex marriage. Although it is too soon to assess the full impact of the legislation, there are already early indications that same-sex marriage has far-reaching consequences and leads, in time, to further legislative demands, including:

- Changing birth certificates so that they refer to 'Progenitor A' and 'Progenitor B' rather than 'mother' and 'father'. (Spain)
- Giving legal recognition to threesomes. (Netherlands)

<sup>7</sup> Government Equalities Office, Equal Civil Marriage, Impact Assessment, 9 January 2012.

<sup>8</sup> Lynne Featherstone MP, BBC Radio 5 Live, *5 Live Breakfast*, 15 March 2012.

<sup>9</sup> Alliance Defense Fund, *Gas and Dubois v France and Same-Sex 'Marriage' in Religious Premises*, April 2012.

- Proposals to introduce fixed-term marriages. (Mexico)
- Attempts to use same-sex marriage as a precedent to legalise polygamy. (Canada)

**For all the reasons provided above, we would urge you to take part in this consultation and let the government know why you oppose its proposals to legislate for same-sex marriage.**