

***Government Equalities Office***

***Consultation on Equal Civil Marriage***

***Response by:***

***Christian Concern***

***The Christian Legal Centre***

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## **Questionnaire:**

### **Government Equalities Office consultation on Equal Civil Marriage**

**Closing date: 14 June 2012**

**E-mail response to:** [equalcivilmarriage@geo.gsi.gov.uk](mailto:equalcivilmarriage@geo.gsi.gov.uk)

## **About Us**

Christian Concern is a policy and legal resource centre that identifies changes in policy and law that will affect the Christian heritage of our nation. The team of lawyers and advisers at Christian Concern conduct research into, and campaign on, legislation and policy changes that may affect Christian freedoms or the moral values of the UK. Christian Concern reaches a mailing list of over 60,000 supporters. <http://www.christianconcern.com>

Christian Concern is linked to a sister and separate organisation, the Christian Legal Centre, which takes up cases affecting Christian freedoms. <http://www.christianlegalcentre.com>

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**Question 1: Do you agree or disagree with enabling all couples, regardless of their gender to have a civil marriage ceremony?**

Disagree.

**Question 2: Please explain the reasons for your answer. Please respond within 1,225 characters (approx. 200 words).**

Same-sex 'marriage':

1. Is not a Human Right

The European Court of Human Rights (ECHR) recently ruled that governments are not required to legislate for same-sex marriage as "the protection of family in the traditional sense is, in principle, a weighty and legitimate reason which might justify a difference in treatment."<sup>1</sup>

2. Is not geared towards children

Heterosexual marriage is a life-long commitment between a man and a woman. It's geared towards procreation and is the best environment for raising children, which benefits society. Two men or two women cannot create a child. Such a union will always deny a child either a mother or a father which is never right. Therefore such relationships should not be given the same backing from the State or legal status.<sup>2</sup>

3. Threatens religious freedom

Restricting same-sex marriage to civil premises is likely to be illegal under European law (see answer to Q5). Once allowed in churches, no one can guarantee that churches will be able to refuse to provide such services and not be successfully sued.<sup>3</sup>

4. Is opposed by the public

70% of people in Britain believe that marriage should remain an "exclusive commitment between a man and a woman."<sup>4</sup>

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<sup>1</sup> The ECHR ruled that Article 14 (prohibition on discrimination) has been held to be inapplicable since "protection of family in the traditional sense is, in principle, a weighty and legitimate reason which might justify a difference in treatment." *Gas and Dubois v. France*, March 2012 (no. 25951/07), *Wilkinson v Kitzinger* [2007] 1FLR 29, *Karner v Austria* [2003] 38 EHHR 52, *Estevez v Spain* ECtHR, 10 May 2001

<sup>2</sup> See: Morgan., Patricia, "Children as Trophies: Examining the Evidence on Same-Sex Parenting", The Christian Institute., February 2002

<sup>3</sup> The ECHR recently quoted a non-binding resolution by the Parliamentary Assembly of the Council of Europe which said that, should same-sex marriages be legalised, it will place the State under an obligation to "ensure that [the] rights and obligations [of homosexual couples] are equivalent to those of heterosexual couples in a similar situation." - *Gas and Dubois v. France*, March 2012 (no. 25951/07). However it is not possible to accurately predict what the European Court would decide if such legal challenges went forward. Therefore Government assurances towards religious freedom cannot be given with any certainty.

<sup>4</sup> ComRes Poll: [http://www.comres.co.uk/polls/Marriage\\_Tables\\_March\\_2012.pdf](http://www.comres.co.uk/polls/Marriage_Tables_March_2012.pdf)

**Question 3: If you identify as being lesbian, gay, bisexual or transsexual would you wish to have a civil marriage ceremony?**

N/A

**Question 4: If you represent a group of individuals who identify as being lesbian, gay, bisexual or transsexual would those you represent wish to have a civil marriage ceremony?**

N/A

**Question 5: The Government does not propose to open up religious marriage to same-sex couples. Do you agree or disagree with this proposal?**

Agree. Same-sex marriage should not be allowed in churches to protect religious freedom. However, any plan to restrict such marriages to civil premises may well be illegal.

The Government claim that same-sex marriage will only affect 'civil marriages' and that therefore marriages in churches will remain between a man and a woman and religious freedom will be protected.

Unfortunately, the Government's distinction between "religious" and "civil" marriage is misleading since there is only one form of marriage, namely "legal" marriage.

If legal marriage is redefined to include same-sex couples, then under equality laws, the partners to such a marriage will, as a starting point, be entitled to the same rights, including the right to have their ceremonies conducted on religious premises.

The European Court of Human Rights recently quoted a non-binding resolution by the Parliamentary Assembly of the Council of Europe which said that, should same-sex marriages be legalised, it will place the State under an obligation to "ensure that [the] rights and obligations [of homosexual couples] are equivalent to those of heterosexual couples in a similar situation." (Gas and Dubois v. France, March 2012 (no. 25951/07)).

Under Article 14 of the European Convention on Human Rights, unlawful discrimination occurs when persons in similar situations are treated differently without an objective and reasonable justification.

Thus, where same-sex couples have been given the right to marriage, it will be difficult for the Government to then argue that there is an objective and reasonable justification for a difference in treatment – for example, by allowing one couple to marry in a church and not another couple.

The Government will therefore be open to legal challenges against having a policy which restricts same-sex couples from also getting married in churches.

The right to freedom of religion under Article 9 and the right to freedom of association under Article 11 would also be taken into consideration by the ECHR when ruling on any clash of rights. Yet it is not possible to accurately predict what the ECHR would decide once the test cases reached it.

Therefore Government assurances regarding religious freedom on this issue cannot be given with any certainty, and are essentially misleading.

**Same-sex marriage on religious premises**

In addition, should same-sex marriage be allowed on civil premises, there will then be a huge push for such ceremonies to also be made available in churches. Stonewall is already campaigning for this. Civil Partnership ceremonies were initially only allowed on civil premises, but they are now allowed on religious premises. The same is likely to happen with same-sex marriage ceremonies.

On this basis, introducing same-sex marriage, whether restricted to civil premises or not, presents a huge threat to religious freedom.

Should same-sex marriage be allowed in churches, the Government will aim to create voluntary system for churches in order to protect religious freedom.

However, there are bound to be legal 'test cases' brought against those churches that do not want to provide such ceremonies, and churches could lose legal challenges on the basis of the reasoning given above.

Discrimination claims against churches may well succeed irrespective of any legislative safeguards for conscience as the ECHR may overturn any such protections on the basis of Article 14.

### **Court rulings**

The threat to religious freedom is *very real* as the UK courts have been consistently ruling that sexual orientation rights trump the right to freedom of belief when resolving disputes between the two, often incompatible, equality strands.

This has led to many Christians losing their jobs and being penalised for refusing to compromise their beliefs in the public sphere, particularly at work. The following are but a few examples:

- Lillian Ladele, a civil registrar, was forced to resign after being disciplined by Lambeth Council for refusing to officiate at same-sex partnerships. An Employment Appeal Tribunal rejected her case for religious discrimination, a decision which was later upheld by the Court of Appeal.
- A Christian couple, Owen and Eunice Johns, were rejected as potential foster parents by Derby Council after stating that they would not promote homosexuality to a child in their care. The Council's decision was effectively upheld by the High Court who claimed that the Council could in principle exclude them on the basis that couple's beliefs contravened the Council's 'equality and diversity' policy.
- Gary McFarlane, a Christian relationships counsellor, was sacked for mentioning, on a staff training day, that he may have conscience objection to providing sex therapy to homosexual couples because of his faith. He lost his case in the UK courts and now his case is before the ECHR.
- A Judge ruled that two Christian owners of a guesthouse, Peter and Hazelmary Bull, had acted unlawfully in refusing to rent a double-room to a same-sex couple (in accordance with their "married couples only" policy). The decision was upheld by the Court of Appeal.
- Dr Sheila Matthews was dismissed from her role on the local authority's adoption panel after requesting to refrain from voting when homosexual couples were being considered as potential adoptive parents. Her case for religious discrimination was rejected by the employment tribunal.
- Theresa Davies, a registrar with Islington Borough Council, was demoted from her job because of her refusal to preside over civil partnership ceremonies. Her case did not proceed to an em-

ployment tribunal because her complaint had the same facts as those in a previous case involving registrar Lillian Ladele.

- Andrew McClintock, a Christian Magistrate sitting on the Family Panel at Sheffield Magistrates Court, was forced to resign because he was not allowed to opt-out of cases which would require him to place children in the care of homosexuals. An employment tribunal rejected his case for religious discrimination.
- Several Catholic adoption agencies have been forced to permanently close after refusing to place children in the care of homosexual couples, against their religious ethos.

These precedents are likely to be followed by the UK courts in any legal clash between those who demand same-sex marriage and those who do not wish to facilitate it for reasons of belief and conscience.

The promotion of homosexual rights above all others has also created general intolerance towards Christians in the public sphere, as can be seen from the following examples:

- Arthur McGeorge, a Christian bus driver, is facing disciplinary action after circling a petition backing traditional marriage during his lunch break. He was told to apologise for the “offence” he had caused.
- Adrian Smith, a Christian employee of Trafford Housing Trust, was demoted for posting a comment on his private Facebook page (out of working hours) suggesting that the new rules permitting civil partnerships to be registered in religious premises were “an equality too far”. Mr Smith was found guilty of gross misconduct and faced a pay cut from £35,000 to £21,396 per annum.
- Tory MP, Chris Grayling, was refused a post as Home Secretary after commenting that Bed & Breakfast owners should be allowed to follow traditional beliefs on marriage when offering their services.
- Philip Lardner, the Conservative Party’s candidate for North Ayrshire and Arran, was sacked for expressing his views on homosexuality on a personal website.
- Dr Hans-Christian Raabe, a Manchester GP, was sacked by the Home Office from the Advisory Council on the Misuse of Drugs after it was discovered that he had co-authored an article with six other medical practitioners, supporting a link between homosexuality and paedophilia, despite the Home Office having previously published the same statistics elsewhere.

Should same-sex marriage be legalised we are likely to see an explosion in cases such as these, as homosexual marriage will be officially promoted by the State and any dissenters who do not want to facilitate such arrangements or promote them in any way due to conscience will be severely penalised.

### **Broken Promises**

When Civil Partnerships were introduced, the Government at the time promised that the new arrangements would *not* devalue conventional marriage or create same-sex marriage under another guise, but would simply redress the social and economic disadvantages faced by those in long term same-sex relationships. This promise has now been broken by the Government’s plans to introduce same-sex marriage.

## Equality

Finally, Civil Partnerships provide virtually the same legal rights as marriage, so there is no need to legislate for same-sex marriage as a matter of 'equality'. This is a cynical political manoeuvre.

### **Question 6: Do you agree or disagree with keeping the option of civil partnerships once civil marriage is available to same-sex couples?**

This question assumes that civil marriage *will* be made available to same-sex couples. This assumption makes a mockery of Question 1, which asks the respondents whether or not they agree that civil marriage *should* be introduced.

The wording of this question reflects the Government's stated intention to redefine marriage by 2015 despite the responses it will receive to this consultation, despite the plans being opposed by 70% of the public and despite such a policy not being contained in any election manifesto. This is profoundly undemocratic.

The proposals have been met by significant opposition from members of the public, MPs and religious leaders across the board. More than 537,000 people have signed a petition to say that marriage should not be redefined.<sup>5</sup>

Marriage is an institution that affects everybody. Redefining it without any democratic mandate is profoundly illiberal.

Should the Government press ahead with its proposals, it will be imposing the ideology of homosexual campaigners onto the rest of society regardless of the views of the majority.

### **Question 7: If you identify as being lesbian, gay, bisexual and were considering making a legal commitment to your partner would you prefer to have a civil partnership or a civil marriage?**

N/A

### **Question 8: The Government is not considering opening up civil partnerships to opposite-sex couples. Do you agree or disagree with this proposal?**

Agree.

### **Question 9: If you are in a civil partnership would you wish to take advantage of this policy and convert your civil partnership into a marriage?**

N/A

### **Question 10: Do you agree or disagree that there should be a time limit on the ability to convert a civil partnership into a marriage?**

N/A

### **Question 11: Do you agree or disagree that there should be the choice to have a civil ceremony on conversion of a civil partnership into a marriage?**

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<sup>5</sup> <http://c4m.org.uk/>

N/A

**Question 12: If you are a married transsexual person would you want to take advantage of this policy and remain in your marriage while obtaining a full Gender Recognition Certificate?**

N/A

**Question 13: If you are the spouse of a transsexual person, would you want to take advantage of this policy and remain in your marriage whilst your spouse obtained a full Gender Recognition Certificate?**

N/A

**Question 14: Do you have any comments on the assumptions or issues outlined in this chapter on consequential impacts? Please respond within 1,225 characters (approx 200 words).**

Hundreds of pieces of legislation will have to be amended as both the common and legal definition of the word 'marriage' will have to be changed. The word 'marriage' appears 3,258 times in legislation. Many other legal concepts and terms will also have to be amended such as 'husband and wife', 'consummation' and 'adultery'.

In addition, the chapter failed to address the consequential impact on future legislation. In Canada legalising same-sex marriage has led to supporters of polygamy demanding in the courts for their unions to be recognised. In Mexico same-sex marriage was followed by two year fixed-term marriage.

If the legal definition of marriage is changed then every sexual minority group will have a greater case to lobby for marriage. Muslims, Mormons, bisexuals and polyamorists will have a much stronger case to argue for the legalisation of polygamy and group marriages.

Finally, as noted, if marriage is redefined to include same-sex couples, such persons will be entitled to the same rights as couples in a heterosexual marriage, including the right to have a church ceremony. There will be many consequential impacts on religious freedom as outlined in our answer to Question 5.

**Question 15: Are you aware of any costs or benefits that exist to either the public or private sector, or individuals that we have not accounted for in the impact assessment? Please respond within 1,225 characters (approx 200 words).**

Redefining marriage will cost billions of pounds and is not an electoral priority at a time when many service providers are having their funding cut back.

**Question 16: Do you have any other comments on the proposals within this consultation? Please respond within 1,225 characters (approx 200 words).**

This is a massive social experiment which is unnecessary and untested.

Heterosexual marriage is a life-time commitment between a man and a woman. It is geared towards procreation and is the best environment for raising children.



Two men or two women cannot create a child. Any such union will always deny a child either a mother or a father and this can never be in the best interests of a child. Therefore such relationships should not be given the same backing from the State or the same name ('marriage').

The Government itself has stated that children do best when raised by "both birth parents".<sup>6</sup>

Many studies have shown that children do best with a married mother and father, but those with homosexual parents suffer negative outcomes including higher reports of gender confusion.<sup>7</sup>

One study showed that married heterosexual parents "offer the best environment for a child's social and educational development" and that such children perform better at school than those from families led by homosexual couples.<sup>8</sup>

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<sup>6</sup> See the Coalition's paper entitled *Social Justice: transforming lives* (March 2012) available at: <http://www.dwp.gov.uk/docs/social-justice-transforming-lives.pdf>

<sup>7</sup> See: Morgan., Patricia, "Children as Trophies: Examining the Evidence on Same-Sex Parenting"., The Christian Institute., February 2002

<sup>8</sup> Sarantakos, Sotirios, "Children in Three Contexts" *Children Australia*, volume 21, 1996, pages 23-31.