Equal marriage: The Government's response

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HM Government

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Ministerial foreword

Marriage is a hugely important institution in this country. The principles of long-term commitment and responsibility which underpin it bind generations together, and make our society strong.

Marriage is also an institution which has a history of continuous evolution. As society has changed, so it has changed, and become available to an increasingly broad range of people. In fact, if the history of marriage tells us anything, it is that the defenders of marriage have had at times needed to be radical reformers. During the course of the 19th century many iniquities in marriage were removed. The 20th century saw great battles about the status of women within marriage. These have now been resolved: married men and married women are now equal before the law.

So marriage in the 21st century is an inclusive, not exclusive, institution. It is available to all those over 16 who are prepared to make vows of life-long fidelity and commitment. Except, that is, if you happen to love someone of the same sex. This simply cannot be right. Since 1836 marriage has been a civil institution as well as a religious one: the state recognises equal rights in all aspects of civil life and cannot justify preventing people from marrying unless there are extremely good reasons for doing so – being gay or lesbian is simply not one of them.

Some say that this is a wrong which was righted by the introduction of civil partnerships in 2005. This was certainly an important step forward, but the fact that same-sex couples are excluded from marriage remains.

For me, extending marriage to same sex couples is all about how society treats its citizens – we are all equal. It will strengthen, not weaken, this vital institution and help ensure that it remains an essential building block of society.

But I also know there are concerns. While some religious organisations have made it clear they would like to marry all couples, others have been absolutely clear that their faith would prohibit it. So this consultation response sets out how we will ensure unequivocally that no religious organisation will be forced to marry same-sex couples, while also ensuring that organisations who wish to conduct these marriages can also opt-in as they can for civil partnerships.

Freedom of religious belief is as important to me – and to the Government – as is equality for all before the law. Both the case law of the European Court of Human Rights and the rights enshrined in the European Convention on Human Rights put the protection of religious belief in this matter beyond doubt. We will create a series of protections in legislation to ensure that these rights are safeguarded and no religious organisation can be successfully sued for refusing to marry same-sex couples.

I now look forward to a free, open and rigorous debate on the legislation which we will introduce later this Parliamentary session. Over the coming weeks, and in preparation for the forthcoming Bill, we will continue to meet and discuss these proposals with all those who have an interest.

Rt Hon Maria Miller MP
Minister for Women and Equalities

Executive summary

1.1 In March 2012 the Government launched a consultation which looked at how to enable same-sex couples to get married. The consultation ran for 13 weeks, closing on 14 June 2012. Just over 228,000 responses were sent to us, together with 19 petitions. This is the largest response ever received to a Government consultation, highlighting that this is an important issue to a great many people.

1.2 Our commitment, outlined in the consultation, was to consider how to enable same-sex couples to get married. While we recognise that there were many views opposing this proposal, the majority of responses to the consultation (not including petitions) supported opening up marriage to same-sex couples. We remain committed to changing the law to make civil marriage ceremonies available for same-sex couples.

Legal position

1.3 The consultation made clear that no religious organisation or its ministers would be forced to conduct marriage ceremonies for same-sex couples. This position is already guaranteed under Article 9 of the European Convention on Human Rights, and in Strasbourg case law. This response sets out a 'quadruple lock' of additional measures which the Government will take to put this position utterly beyond doubt. These are:

- ensuring the legislation states explicitly that no religious organisation, or individual minister, can be compelled to marry same-sex couples or to permit this to happen on their premises;
- providing an 'opt-in' system for religious organisations who wish to conduct marriages for same-sex couples;
- amending the Equality Act 2010 to reflect that no discrimination claims can be brought against religious organisations or individual ministers for refusing to marry a same-sex couple or allowing their premises to be used for this purpose; and
- ensuring that the legislation will not affect the Canon law of the Churches of England or the Church in Wales.[1]

1 The Church of England has long been the established church and as such, Canon law places the teaching and practices of the Church in legislation.

1.4 We fully recognise the unique position of the Church of England as the Established Church. Concerns have understandably been raised that, if the law in England were to change to allow the marriage of people of the same sex, this would fundamentally conflict with the Canon law. The Church of England pointed out in its response that by law[2] no Canon can be made which is contrary to the royal prerogative, customs, laws or statutes of the realm.

1.5 We do not dispute the Church's authority here; however it is equally true that Parliament is sovereign and can enact to take account of potential conflicts with the Canon law. In the case of marriage, the legislature has, in the past, sought to avoid conflict with the Canon law position by the use of exemption and conscience clauses so that the Church might take a position in conscience that is consistent with its teaching on the nature of marriage. So, for example, although legislation allows that people who are divorced to marry again, the Church and individual ministers have been relieved of the obligation to marry such people[3].

1.6 We want to continue the constructive conversations we have had with religious organisation and continue to work with religious organisations on these protections as we prepare to introduce the legislation into Parliament

Religious marriage ceremonies for same-sex couples

1.7 The consultation proposed that religious organisations would be banned from conducting marriages for same-sex couples. The majority of respondents on this point believed that religious organisations should be able to conduct marriage ceremonies for same-sex couples if they so wish.

1.8 The Government intends to allow those religious organisations that want to conduct marriages for same-sex couples to 'opt-in' while making clear they are under no obligation to do so. Through this system it will remain unlawful for an individual church or place of worship belonging to that faith to marry same-sex couples without the agreement of its governing body.

Civil partnerships

1.9 The majority of those who responded to these questions and the lesbian, gay, bisexual and transgender representative organisations we met separately supported the continuation of civil partnerships for same-sex couples. The majority of those who responded to these consultation questions also suggested that civil partnerships should be available to opposite sex couples, though some argued that marriage should be the only option available. We remain unconvinced that extending civil partnerships to opposite sex couples is a necessary change. We will therefore be retaining civil partnerships for same-sex couples only.

2 The Submission of the Clergy Act 1533, ss1, 3 and applied by the Synodical Government Measure 1969, s1(3).

3 For example, the Matrimonial Causes Act 1965, section 8(2)(a), relieves a priest of his duty to marry those otherwise entitled to be married in his church if one or both parties has been divorced and his or her partner is still living.

Conversion of civil partnerships

1.10 We know that some of the 50,000 couples who have entered into civil partnerships would have chosen to get married instead, had this been possible. Most respondents who answered this consultation question supported the introduction of a route by which civil partnerships could be converted into civil marriages. This message was reiterated during separate meetings with LGB&T organisations. The Government will be making a conversion process available. This process will not be time limited.

Gender recognition

1.11 Currently individuals who wish legally to change their gender must end their marriage or civil partnership before a full gender recognition certificate can be issued. This can cause great distress and practical problems for couples. Most respondents who answered these questions agreed with our plan to change the law so that individuals can legally change their gender while remaining married.

Wider issues

1.12 Historic policy developments, in particular in relation to benefits derived from state pension, have meant that married men and married women have different pension rights. When civil partnerships were introduced civil partners were given the same pension rights as are available for married men. We propose that same-sex couples will be treated in the same way as civil partners and married men. Over time all pension rights will converge.

Next steps

1.13 The Government is committed to introducing this legislation within the lifetime of this Parliament and we are working towards this happening within this Parliamentary Session. Over the next weeks, we will continue to work closely with all organisations that have an interest in these proposals.

Introduction

Current legislation

2.1 Under the Marriage Act 1949 and the Matrimonial Causes Act 1973 marriage is permitted between a man and a woman provided that they are over the legal age of consent and prepared to make vows of life-long fidelity and commitment. However, if a couple who love each other happen be of the same-sex, they are excluded.

2.2 The Civil Partnership Act 2004 was introduced to allow legal recognition of partnerships between same-sex couples. In December 2011, it also became possible for the registration of a civil partnership to take place on religious premises, where the religious organisation has consented to do so. However, the fact remains that same-sex couples are excluded from marriage.

2.3 The history of marriage is one of continuous evolution. Changes to the law in the 19th and 20th centuries saw marriage gradually become available to people of all faiths and for people of no faith. Married men and married women became equal under the law. Particularly importantly, in 1836, marriage became a civil institution, as well as a religious one.

What we asked in the consultation

2.4 We do not believe that excluding same-sex couples from getting married is right. That is why, in March 2012, we launched the consultation which focused on how the Government should enable same-sex couples to marry. It asked 16 questions covering:

- how same-sex couples could have a civil marriage ceremony;
- whether religious marriage ceremonies should be possible for same-sex couples;
- whether civil partnerships should be retained for same-sex couples only, and how civil partnerships should be converted into marriages;
- whether those seeking legally to change their gender should be able to remain in their marriage;
- consequential impacts of these proposals (including pensions and international recognition).

The responses

2.5 The Government received over 228,000 responses, not including petition signatures, almost all of which responded to the question asking whether they agree or disagree with enabling same-sex couples to have a civil marriage ceremony.

228,000	Total number of responses to the consultation – online, email and correspondence. Support or opposition to civil marriage was ascertained for all responses.
This included:	
137,000	Responses to at least one of the other specific questions (3-13) set out in the consultation.
97,000	Letters and emails which did not answer the questions specifically but which commented on the proposals
These 97,000 letters and emails, included:	
75,000	Identical emails which formed part of a campaign
In addition we received:	
Over 500,000	Signatures to petitions

2.6 A list of the organisations which responded can be found on the Home Office website. Details of the petitions received can be found at Annex A.

This response

2.7 This document describes the views expressed during the consultation period and outlines the Government's proposed way forward to enable same-sex couples to get married.

Civil marriage ceremonies for same-sex couples

3.1 At its heart, marriage is about two people who love each other making a formal commitment to each other. We do not believe that this commitment is any different whether it is made by a same-sex couple or an opposite sex couple. We believe that by allowing same-sex couples to get married we are further strengthening the institution of marriage.

Consultation proposals

3.2 Our proposals looked at how to allow same-sex couples to get married through a civil ceremony.

> Questions 1 and 2 asked "Do you agree or disagree with enabling all couples, regardless of their gender to have a civil marriage ceremony" and for the reasons why.

Summary of responses

3.3 Across the various methods by which people responded we had more responses to these questions than to any others. Overall, views were divided. Of the 228,000 responses to the consultation, 53% agreed that same-sex couples should be able to have a civil marriage ceremony and 46% disagreed (1% said don't know or not sure). This includes all responses that indicated their view on the principle of allowing same-sex couples to get married, rather than just those who responded specifically to question 1. However, these figures do not take account of those petitions we received, which were universally opposed.

3.4 Within the 53% of people and organisations who agreed with allowing same-sex couples to have a civil marriage some expressed views on the nature and importance of marriage. This included their belief that it is right to allow same-sex couples to express their love and happiness in the same way as opposite sex couples, and to allow them to have access to marriage which is socially and legally seen as a strong bond between the couple.

3.5 Respondents acknowledged that the introduction of civil partnerships was a significant step forward in society. A few respondents, who agreed with the proposals, nevertheless felt that there are too many differences, both practically and symbolically, between marriage and civil partnerships. For example, respondents commented that "civil partnerships can be seen as a second class form of registration" and that the difference means that "same-sex relationships are demeaned by dismissing them as 'only civil partners' or 'not really married'". Stonewall commented in their response that

> "by insisting marriages and civil partnerships be kept separate, organisations and individuals perpetuate the notion, even if inadvertently, that relationships between same-sex couples are not as valid as those between heterosexual couples".

3.6 This belief that relationships between same-sex and opposite sex couples was often referenced as the relationships being seen as equal, as shown by the Unitarian Church stated:

> "The General Assembly has expressed its support for full equality for Lesbian, Gay, Bisexual and Transgender people, with in 1977 making it clear that ministry in the denomination was open to all and expressing abhorrence of discrimination on the basis of sexual orientation…. This position reflects our longstanding acceptance of the equal validity of same sex relationships in the same way as opposite sex"

3.7 In a similar vein, most respondents who agreed with the proposals saw allowing same-sex couples to have a marriage ceremony as a matter of equality, and/or human rights. Many individuals and organisations, including the National LGBT Partnership felt that "access to civil marriage is an important step forward for LGB&T people, and the ban on civil marriage is arguably the last major inequality in English and Welsh law for LGB&T people".

3.8 In addition to the equality benefits of the proposals, a number of those who agreed with them felt that allowing same-sex couples to marry would be good for society as a whole, and would reflect the position of society and social views regarding same-sex couples. The National Union of Students also commented that:

> "these steps would also have a positive impact on wider public attitudes towards LGBT people and ultimately contribute to a more inclusive society where there is more choice and acceptance".

3.9 However, others disagreed with these views and did not believe that same-sex couples should be able to get married. Most of these responses commented that this was because it did not fit in with the current legal definition of marriage, as being between a man and a woman. Of those who indicated they were against the proposals, most said that this was because the true meaning of marriage could not include same-sex couples. The Catholic Bishops Conference of England and Wales quoted the definition included in the Catechism[4]:

> "The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life, is by its very nature ordered to the good of the spouses and the procreation and education of offspring".

3.10 This view was also made in the petition from the Coalition for Marriage, and other petitions, including from General Presbytery of Ulster.

3.11 The same view was expressed in responses, including the response from the Church of England, who raised their concern that our proposals changed the definition of marriage, as outlined in Christian teachings and Canon Law[5] (that marriage is "...a union permanent and lifelong for better for worse, till death them do part, of one man with one woman, to the exclusion of all others on either side..."). This belief was also echoed by the Muslim Council of Britain, who quoted the Qu'ran (53:45): "He

4 Catechism of the Catholic Church, §1601.
5 Canon B30

himself created the pair, male and female". Some responses that raised religious arguments around the proposals also supported this view.

3.12 The Catholic Bishops Conference of England and Wales with whom others (for example the Evangelical Alliance) agreed, saw marriage as based on "the biological complementarity of male and female and on the possibility of children". They also raised concerns that changing the definition of marriage in the way proposed would conflict with their view that the distinguishing purpose of marriage is having and raising children rather than just being about love and commitment – which could for example be the love and commitment between an aged parent, or two siblings living together.

3.13 Some of those who did not support the proposal to open up marriage to same-sex couples believed that civil partnerships provided adequate and equivalent protections. This meant they believed there was no extra benefit to providing same-sex couples access to marriage.

3.14 Many also felt that allowing same-sex couples to marry would be bad for society as a whole. They believed it would, for example, have wider negative consequences or send out the wrong message to children. Respondents raised concerns that the role and place of marriage in society would be taken too lightly, or that it would "bring about more instability to marriages in this country". They saw marriage between a man and a woman as of fundamental benefit to society. In contrast, some responses, including that of the Evangelical Alliance, felt that allowing same-sex couples to get married would have a negative impact on all people's marriages, and therefore society, as the institution would be "diluted".

3.15 Many respondents who gave reasons for their opposition felt that allowing same-sex couples to get married was against equality. This was because of concerns that it went against the rights of people of faith, in favour of lesbian, gay and bisexual people, especially when there was seen to be no additional benefit. For example, there was concern that this was "giving special treatment" to same-sex couples or that these proposals would "result in the criminalisation of those who disagree with same-sex marriage".

3.16 Other questions sought information about demand for this policy. Most of those who said the question applied to them said they would have a civil marriage ceremony. This information is considered as part of the impact assessment which will be published when legislation is introduced to Parliament.

3.17 One of the drivers for this change was to allow those seeking a gender recognition certificate to remain in their marriage. The views expressed and evidence provided on this topic are dealt with in the gender recognition section.

Government's response

3.18 We recognise that there is a broad range of strongly held views on this issue. After taking into account the responses the Government continues to believe that same-sex couples should have access to a civil marriage ceremony. We believe that the commitment made by same-sex couples is the same as that by opposite sex couples and as such they should not be excluded from marriage.

3.19 Same-sex couples will be able to have a civil marriage ceremony in the same way as for opposite sex couples. There will be the same administrative process and the same contracting words or vows. Same-sex couples will refer to each other for legal purposes as "husband and husband", or "wife and

wife". An opposite sex couple would continue to use "husband and wife". The criteria that are currently in place to determine who can form a marriage (e.g age of consent, family links, between two people only) will remain as now and we have no plans to make any amendments to these criteria.

3.20 We believe the existing law already provides the correct balance of safeguards. Superintendent registrars and registrars, as public servants, will be required to conduct marriage ceremonies for same-sex couples, on the same basis as civil partnership registrars are currently required to register civil partnerships for same-sex couples. We will continue to work with the Registration service on the training of registration officers and the implementation of any new processes.

Religious marriage ceremonies for same-sex couples

4.1 Faith is one of the pillars of our society and we respect the views of those with religious beliefs. Faith has played, and will continue to play, a huge role in shaping the culture and heritage of this country. We recognise the concerns that many people of faith have about these proposals.

4.2 We also recognise that as the established church the Church of England and the Church in Wales have specific duties including a legal duty to marry people where there is a link to their parish.

4.3 While there is no current legal definition of 'religious marriage', 'religious' marriage ceremonies, as set out in the Marriage Act 1949, can be conducted a variety of ways:

- a marriage according to the rites of the Church of England or Church in Wales;
- a marriage according to the usages of the Society of Friends (Quakers);
- a marriage according to the usages of the Jewish religion;
- a marriage in a registered building in the presence of an authorised person or registrar.

Consultation proposals

4.4 The consultation proposed to allow same-sex couples to have a civil marriage ceremony only and that no religious organisation would be able to conduct marriages for same-sex couples. We have always been clear that no individual minister of a religious organisation would be forced to conduct ceremonies for same-sex couples.

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

4.5 The consultation made clear that there would be no legal duty on Church of England (or Church in Wales) ministers to marry same-sex couples. It also stipulated that no religious organisation or religious minister should face successful legal challenge for refusing to conduct a marriage ceremony for a same-sex couple.

4.6 We understand that the doctrines of many faiths hold the view that marriage can only be between a man and a woman, and that this belief is fundamentally contained within the

teachings of their faith. The consultation stated that no-one should face successful legal action for hate speech or discrimination if they preach their belief that marriage should be only between a man and a woman.

Summary of responses

4.7 The majority of respondents who directly answered question 5 disagreed with the proposal and would like religious marriages ceremonies to be available to same-sex couples.

4.8 Liberty's response quoted organisations which wanted to host marriage ceremonies for same-sex couples including the Movement for Reform Judaism, the Unitarian and Free Christian Churches and Liberal Judaism. This was also raised as an additional comment by some respondents who agreed with the principle of allowing same-sex couples to get married.

4.9 The National LGBT Partnership thought:

> "it should be for individual places of worship to decide whether or not they want to marry same-sex couples and freedom of religion means that the government should not continue to support the ban on religious marriage for same sex couples.".

4.10 This was echoed by Stonewall, who felt that allowing same-sex couples to have a religious marriage on a permissive basis was a matter of "religious liberty and respect".

4.11 Some religious organisations including the Unitarian and Free Churches responded that:

> "This is a matter of religious freedom; we do not wish to impose our views on others; however, their opposition should not prevent us from doing what we believe to be just and right".

4.12 Liberty stated their belief "in freedom of thought, conscience and religion and believes this should include the option for faith groups to choose whether or not to host same-sex marriages". They strongly supported the rights of those religious organisations that wished to, to also conduct marriage ceremonies for same-sex couples. This was also supported by the legal opinion which was attached to their submission which highlighted:

> "It is extremely difficult to see how interfering with the religious freedom of churches by requiring them to celebrate marriages that they not only consider to be doctrinally impossible but also not in fact to be marriages could be justified as proportionate having regard to the importance of rights under Article 9 and the case law from the ECtHR".

4.13 This was also referenced by the Catholic Bishops Conference of England and Wales which responded that making it unlawful to conduct same-sex marriages on religious premises "immediately creates another problem of religious freedom for those groups such as the Quakers who have made it clear that they would wish to celebrate same-sex marriages on their religious premises". This was a view shared by the Quakers who would want to conduct marriage ceremonies for same-sex couples

4.14 A few responses from people who addressed this point thought that all religious organisations should be forced to conduct marriage ceremonies for same-sex couples.

4.15 A number of those who disagreed that same-sex couples should be able to get married, raised concerns that religious organisations would be put under pressure to conduct marriage ceremonies for same-sex couples or be forced to do so, either under domestic legislation or following a ruling of the European Court of Human Rights (ECtHR). Organisations which raised these concerns included the Church of England and the Muslim Council of Britain. The Church of England felt that "if a member state chooses to make provision in its domestic law for same-sex marriage, then so far as the European Convention on Human Rights is concerned same-sex marriage is protected by the Convention in the same way that opposite-sex marriage is protected: the right to marry contained in article 12[6] is applicable to both categories so far as that state is concerned".

4.16 We welcome the in-depth consideration given by a number of respondents to the legal basis for our proposals. For example, the Church of England assessment was that:

> "If opposite-sex couples were able to enter into the (newly-defined) legal institution of marriage in accordance with either religious or civil forms and ceremonies but same-sex couples were able to enter into that institution only in accordance with civil forms and ceremonies that, of itself, would be unlikely to amount to a breach of article 12 because such an arrangement would not deprive same-sex couples of the substance of the right to marry. But there would be a serious prospect of a successful challenge to that arrangement under article 14[7] taken in conjunction with article 12, on the basis that same-sex couples were being discriminated against in relation to matter that was within the ambit of article 12".

Government's response

4.17 The Government recognises and respects the important role that religion plays in our society. Faith communities make a vital contribution to national life in the UK, inspiring great numbers of people to public service and providing help to those in need. We know there are many LGB&T people of faith, and that many people of faith support the move to allow same-sex couples to have a marriage ceremony in their place of worship. At the same time we acknowledge and respect those who have concerns about the implications for religious organisations of allowing same-sex couples to get married by religious means or otherwise.

4.18 After taking all the views expressed into account, we believe that there is strength in the argument that, once marriage is made available to same-sex couples, religious organisations should be permitted to conduct such ceremonies if they wish to. We will continue to work with faith organisations who wish to marry same-sex couples as we develop the detailed process for this to happen.

4.19 However, it will remain unlawful for a religious organisation to marry same-sex couples unless it expressly consents and opts in according to a formal process put in place by legislation. The Government is considering the following 'quadruple lock' of protections for religious organisations who do not wish to marry same-sex couples:

- the legislation will state explicitly that no religious organisation, or individual minister, can be compelled to marry same-sex couples or to permit this to happen on their premises;

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6 Article 12 of the European Convention on Human Rights provides a right for women and men of marriageable age to marry and establish a family.

7 This contains a prohibition of discrimination against people in their enjoyment of their Convention rights and freedoms

- it will be unlawful for religious organisations, or their ministers, to marry same-sex couples unless they have expressly opted in to do so and the legislation will make it clear that no law requires any religious organisation to opt-in.

4.20 Taken together these two provisions will ensure that no action can be brought against a religious organisation or minister if that religious organisation refuses to opt-in to religious marriage. In addition:

- the Equality Act 2010 will be amended to reflect that no discrimination claims can be brought against religious organisations or individual ministers for refusing to marry a same-sex couple or allowing their premises to be used for this purpose; the legislation will not apply to the Church of England (or the Church in Wales), or to their Canon law. This means that it will continue to be illegal for these churches to marry same-sex couples or to opt in to do so.

4.21 We fully recognise the unique position of the Church of England as the Established Church. Concerns have understandably been raised that, if the law in England were to change to allow the marriage of people of the same sex, this would fundamentally conflict with the Canon law. The Church of England pointed out in its response that by law[8] "Canons … do not have effect if they are contrary to the customs, laws or statutes of the realm".

4.22 We do not dispute the Church's authority here; however it is equally true that Parliament is sovereign and can enact to take account of potential conflicts with the Canon law. In the case of marriage, the legislature has, in the past, sought to avoid conflict with the Canon law position by the use of exemption and conscience clauses so that the Church might take a position in conscience that is consistent with its teaching on the nature of marriage. So, for example, although legislation allows that people who are divorced to marry again, the Church and individual ministers, through convocations of the clergy, have been relieved of the obligation to marry such people[9].

4.23 We will likewise ensure that the legislation does not interfere with the Canon law understanding of marriage (Canon B 30), which we accept will be narrower than that of the civil law. Neither is it our intention to create parallel institutions of marriage. The Government would like to continue the constructive discussions with the Church of England to ensure that the legislation adequately addresses their unique circumstances.

4.24 Both the case law of the European Court of Human Rights and the rights enshrined in the European Convention on Human Rights put the protection of religious belief in this matter beyond doubt. We will draft the legislation to ensure that there is a negligible chance of a successful legal challenge in any domestic court, or the ECtHR that would force any religious organisation to conduct marriages for same-sex couples against their will. Any possible claims would be brought against the Government, rather than an organisation to ensure religious organisations would not have to use their resources to fight any legal challenges. We know of no national court attempting to do this in a member state and have no intention of introducing legislation that will have this effect. We will vigorously oppose any attempt to undermine the long-held freedom that religions have in this country to preach, teach and put into practice their beliefs about marriage.

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8 The Submission of the Clergy Act 1533, ss1, 3 and applied by the Synodical Government Measure 1969, s1(3).

9 For example, the Matrimonial Causes Act 1965, section 8(2)(a), relieves a priest of his duty to marry those otherwise entitled to be married in his church if one or both parties has been divorced and his or her partner is still living.

4.25 The ECtHR has made it clear that the European Convention of Human Rights does not impose an obligation on states to grant same-sex couples access to marriage; this is a matter for an individual state's discretion according to its society's needs and conditions (see Schalk & Kopf, paragraphs 60 – 63). Despite assertions to the contrary, the more recent case of Gas & Dubois v France provides no authority for the contention that, if a member state decides to allow for same-sex couples to marry, it must also require religious organisations to do so.

4.26 We recognise that consideration also needs to be given to issues around, for example, shared premises. We will continue to work closely with faith organisations on such particular issues and scenarios to make sure the necessary legislative safeguards are in place.

4.27 We will work with religious organisations as we progress towards legislation, regardless of whether they will want to conduct marriages for same-sex couples or not. There is a balance to be struck, and we are confident that we can effectively allow this in a way that allow those who want to have a religious marriage ceremony to do so, but protect organisations and ministers that do not want to conduct such ceremonies.

Civil partnerships

5.1 Civil partnerships were an important milestone for equality, and for affording same-sex couples equivalent rights, responsibilities and protections to those gained through marriage. Since their introduction in December 2005, over 50,000 civil partnerships have been registered. Civil partnerships are not available to opposite sex couples and legislation specifies other prohibitions on who can form civil partnerships, for example, siblings. But differences remain and at the time of introduction it was clear that civil partnerships were distinct from marriage.

5.2 In December 2011, it became possible for same-sex couples to register their civil partnership on religious premises. This can only take place where the religious organisation agrees to this and the signing of the civil partnership register itself must remain secular.

Consultation proposals

5.3 The consultation proposed to retain civil partnerships for same-sex couples in the future alongside enabling same-sex couples to have a civil marriage ceremony. This would include retaining the current regime of allowing civil partnerships to take place on religious premises.

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

Summary of responses.

5.4 The majority of people who responded to question 6 agreed with the retention of civil partnerships once same-sex couples had the option of a civil marriage ceremony. A few people who supported enabling same-sex couples to get married also raised specific points which indicated they supported the retention of civil partnerships once marriage was available to same-sex couples. Support for the retention of civil partnerships came from a wide range of organisations including Stonewall, the Law Society, Birmingham City Council and the TUC. The Law Society commented:

> "It would be unfair and legally tenuous for those couples to be faced with the choice of either being married or no longer being in a formalised relationship. We can see no practical benefit in dissolving civil partnerships".

5.5 Some individual respondents did not want to see civil partnerships retained after the introduction of equal civil marriage – overall, these were in the minority. Some of those who responded to this question indicated they should be abolished and a few people raised this as part of the additional comments made (outside of the specific answers to question 6). These comments included those who thought they should not be retained because they disagreed with civil partnerships overall, rather than in relation to the introduction of marriage. Others wanted to see equal provisions for same-sex and opposite sex couples and saw removing civil partnerships following the introduction of same-sex marriage as a way of achieving this. Views on the extension of civil partnerships to opposite-sex couples are set out at page 25.

Government's response

5.6 Having taken the range of views into account, we intend to proceed with the proposals in the consultation document to retain civil partnerships for same-sex couples only, including continuing to allow civil partnerships on religious premises. This is because we acknowledge the important role that these unions play in the lives of many couples. Civil partnerships are a well understood union, which have been become part of people's everyday lives and society in general. We see little benefit from removing them.

5.7 Civil partnership formation will continue with exactly the same administrative processes and rules as currently exist. This includes current rules around notice periods, parental consent, age and witnesses.

5.8 We have always been clear that the aim of this consultation and subsequent legislation is to enable same-sex couples to get married, rather than wider reform, and therefore there is no need to remove civil partnerships to fulfil this aim.

5.9 While we will recognise marriages between same-sex couples formed abroad as marriages, the retention of civil partnerships will enable us to recognise same-sex civil unions (that are not marriages) to be recognised as civil partnerships in the UK.

Conversion of civil partnerships

Consultation proposals

6.1 We are aware that had the option of marriage been available, some same-sex couples would have chosen to enter into a marriage, rather than a civil partnership. We therefore proposed to allow same-sex couples to convert their civil partnership into marriage, but not to oblige anyone to do so. The ability to convert a civil partnership into a marriage would also be important to couples in a civil partnership where one person is seeking legally to change their gender by applying for a gender recognition certificate.

6.2 When the consultation was launched, we envisaged that the conversion process would work as follows:

- the couple would have to apply to the relevant authority, and pay a fee, on a cost recovery basis;
- if the couple wish to have a new ceremony to mark the creation of their marriage, then this would be allowed and an additional fee may be charged on a cost recovery basis;
- we would not expect there to be a time limit on the ability to convert from a civil partnership to a marriage; and
- conversion would not be seen as the legal ending of one relationship and the starting of another.

6.3 We asked 3 questions about the process of the conversion of civil partnerships:

Question 9 asked, "If you are in a civil partnership would you wish to take advantage of this policy to convert your civil partnership into a marriage?
Question 10 asked, "Do you agree or disagree that there should be a time limit on the ability to convert a civil partnership into a marriage?
Question 11 asked "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?"

Summary of responses

6.4 The response from question 9 provides evidence on the number of likely conversions and will be considered as part of the impact assessment which will be published when legislation is introduced to Parliament.

6.5 Most respondents who expressed a view on a time limit for the conversion of civil partnerships for example, a couple would have 6 months to convert, and after this time, they would not be able to do so, agreed with the Governments proposal that there should be no time limit. The LGBT Consortium felt that "there seems no valid reason to put a time limit on the ability to convert" which was a view shared by the National Panel for Registration.

Question 11 asked "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?"

6.6 Most of those who responded to question 11, agreed that couples should be able to have a ceremony if they wanted to. These respondents included organisations, such as the National Union of Students who said:

> "While many couples will have had some form of public ceremony to celebrate their civil partnership and may not wish for a further ceremony to mark the conversion, others however may wish to celebrate the conversion and should be given the opportunity to do so".

6.7 There was support for the view that it should be a ceremony without legal significance, including from the National Panel for Registration who commented that it should be "similar to that already offered to renew vows". Some religious organisations, including the Unitarian and Free Churches, requesting that such ceremonies should be possible on religious premises, where the religious organisation is willing to host them.

Government's response

6.8 The Government remains committed to allowing couples to convert their civil partnership into a marriage, should they wish to do so, and ensuring that those who do not wish to do so suffer no legal detriment.

6.9 More details of the conversion process will be outlined at a later date, but it is envisaged that the process will operate as outlined in the initial consultation document. This means that only civil partnerships which were formed in England and Wales will be able to be converted in England and Wales. This is due to the devolved nature of marriage law which means that conversion will only be possible within the jurisdiction where the civil partnership was formed. Therefore, civil partnerships formed in Scotland and Northern Ireland will not be able to be converted in England or Wales.

6.10 We are investigating whether it will be possible to convert civil partnerships registered in UK consulates, or Armed Forces bases, where the civil partnership certificate was returned to England and Wales. Any arrangements we make for conversion of such civil partnerships will reflect the need to take account of the host Government's concerns and interests.

6.11 There will be a fee for converting a civil partnership. We estimate this will be around £100, which is on a cost recovery basis. This cost will be the same for both those couples who choose to convert their civil partnership into a marriage, and also those who need to do so, in order to gain a full gender recognition certificate. The current cost of getting married through a civil ceremony is a minimum of £119.00 (this includes giving notice, the attendance of a registrar, and a marriage certificate). The cost of a conversion is therefore comparable, reflecting the processes which are likely to be needed to identify the existing civil partnership registration, to prevent identity fraud and to issue a new marriage certificate.

6.12 As proposed, we will not place a time limit on the conversion of civil partnerships. This will allow us to achieve our objective of enabling those in a civil partnership to remain in their union if they change their legal gender.

6.13 We will enable couples to have a ceremony upon conversion should they wish to do so. The ceremony would have no legal effect and would be similar to existing ceremonies allowing couples to renew their vows (and would therefore incur a separate cost). Accordingly a couple would be able to have such a ceremony on religious premises, if agreed with the religious organisation and any representatives of that organisation who would be involved in the ceremony.

6.14 We do not propose to allow people to convert from a marriage into a civil partnership (as opposed from a civil partnership into a marriage) as there is no justification or requirement for introducing such a process.

Civil partnerships for opposite sex couples

7.1 It is not currently legally possible for two people of the opposite sex to enter into a civil partnership as civil partnerships are only available to same-sex couples.

Consultation proposals

7.2 The Government was clear that it did not intend to allow opposite sex couples to have a civil partnership as we were unclear of the need for civil partnerships for opposite sex couples and had seen no evidence that opposite sex couples suffered any detriment as a result of not being able to have a civil partnership.

However, we understood that there are a range of views on this issue and therefore in question 8 of the consultation we asked "The Government is not considering opening up civil partnerships to opposite sex couples. Do you agree or disagree with this proposal?"

Summary of responses

7.3 It is clear that many respondents felt that both civil partnerships and marriage should be available to all couples, in order to provide equality. Of those who responded to question 8, the majority disagreed with our proposals and felt that civil partnerships should be made available to opposite sex couples.

7.4 A number of organisations, including the Hindu Forum, indicated they did not think that civil partnerships should be available to opposite sex couples. Manchester Rabbinical Council felt that allowing more people to enter a legal relationship other than marriage would weaken marriage further. The Catholic Bishops Conference of England and Wales stated that "it does not give recognition to any other partnerships or legal unions as having an ethical or legal equivalence with marriage. The Church opposes … extending civil partnerships to opposite sex couples who can marry".

7.5 Some responses, including that from the Church of England raised concern that allowing same-sex couples to get married, without allowing opposite sex couples to have a civil partnership registration would be legally unsustainable.

7.6 A few respondents commented that they felt that civil partnerships should be available to opposite sex couples to enable all couples to have a choice of union. The LGBT Consortium felt that not enabling opposite sex couples to have a civil partnership

> "will continue to adversely affect Trans communities who will have no choice but to convert one legal entity into another. Creating full equality by having civil partnerships and marriage for all, the emotional and legal disruption on trans communities will dramatically decrease whilst also being the most cost-effective solution for the overall system".

7.7 Some responses referred to a couple's decision not to marry, but their wish to gain rights and protections when they had been in a committed relationship for a long time. The issue of cohabitation rights for those who do not wish to marry is a separate consideration and therefore is not considered as part of this consultation.

Government's response

7.8 When civil partnerships were introduced in 2005, they were created to allow equivalent access to rights, responsibilities and protections for same-sex couples to those afforded by marriage. They were not intended or designed as an alternative to marriage. Therefore, we do not believe that they should now be seen as an alternative to marriage for opposite sex couples.

7.9 Opposite sex couples currently have access to marriage, either via a civil or religious ceremony, which is both legally and socially recognised. We understand that not all opposite sex couples wish to marry, but that decision is theirs to make and they have the option to do so if they wish. Through the responses received to this consultation, it has not been made clear what detriment opposite sex couples suffer by not having access to civil partnerships.

7.10 This consultation was not aimed at being a wider process of reform of marriage and civil partnership legislation and therefore we do not consider that it is necessary to open up civil partnerships to opposite sex couples in order to enable same-sex couples to get married.

Gender recognition

8.1 When someone wishes to legally change their gender they are required to obtain a Gender Recognition Certificate (GRC) which is issued by the Gender Recognition Panel (GRP).

8.2 A full GRC cannot currently be obtained by someone who is already in a marriage or civil partnership. This is because the UK does not currently allow same-sex couples to be married, or opposite sex couples to be in a civil partnership. In order for one partner to obtain a full GRC, a couple have to end their marriage or civil partnership.

8.3 This can cause a great deal of distress and concern to the couple and their families. It may also interrupt their contribution records for pensions and benefits. We believe that if a couple wish to remain in their union while one partner obtains a GRC, then it is not for the Government to stand in their way.

Consultation proposals

8.4 Removing the bar to same-sex couples getting married would enable those in a marriage, when one of the couple legally changes their gender, to remain married, should they wish to do so. For example, if a couple, at the time of their marriage were legally a man and a woman and subsequently the woman sought legally to change her gender to male, the couple would currently have to end their marriage even if they did not want to. Under our proposals, this would change and mean that the woman could legally change gender and the couple could then, if they wanted to, remain married.

8.5 A couple in a civil partnership would be able to convert their civil partnership into a marriage if they wanted to, which would then allow one of the couple to apply to change their legal gender. It would not be possible for them to stay in their civil partnership, because this would be an opposite-sex civil partnership which would not be legally possible.

Question 12 asked "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?"
Question 13 asked "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?".

Summary of responses

8.6 Of the 3% of respondents who stated that question 12 related to them, most said they would like to take advantage of this policy.

8.7 The LGBT Partnership commented that "for many trans people, same-sex civil marriage will mean an end to the distressing and inconvenient practice of having to dissolve one's existing marriage to obtain a GRC". The LGBT Consortium indicated that they believed that "trans people who were forced to end their marriages for a partner to obtain a Gender Recognition Certificate should be able to have their benefit entitlements from their original marriage reinstated and any costs reimbursed".

8.8 Of those who said this question 13 applied to them, most said they would take advantage of this policy.

8.9 Where a couple wishes to remain in their marriage, and that marriage is registered in England and Wales, but one party has legally changed their gender, they may wish to have a new marriage certificate which makes this clear. GIRES (a organisation representing transgender people) along with other respondents raised a query about the date on marriage certificates when this happened and whether this would be the date of their original marriage ceremony.

> "Inserting a date before the civil marriage legislation had come into effect would 'out' the couple. GIRES view is that the date should be decided by the couple concerned so that any 'outing' is self outing".

8.10 Some organisations, such as Plaid Cymru, felt that consideration should be given to "whether retrospective reinstatement of benefit contributions or entitlements from the couple's original marriage can be undertaken at minimal cost".

8.11 All views expressed about the process of the GRP and the re-issuing of certificates (apart from marriage certificates) fall outside the scope of this consultation.

Government's response

8.12 The Government remains committed to enabling someone to change their legal gender while remaining in their marriage. Those in a civil partnership registered in England or Wales would have the option to convert their civil partnership without being seen as legally ending that union and rights accrued within the civil partnership would remain.

8.13 We also maintain the position outlined in the consultation that the GRP will not be required to make a judgement on whether the marriage was formed via a religious or civil ceremony. We consider that it would be inappropriate for the GRP to make a judgement on this issue.

8.14 The rights of the spouse must be taken into account when any change occurs to the status of a marriage and therefore we propose that as part of the process of applying to the GRP the spouse would have to sign a statutory declaration that they wish to remain in their marriage once their spouse has changed their legal gender. The current interim GRC procedure will continue to exist where either spouse indicates that they do not wish to stay in their marriage, and this will allow them to end their marriage, as now.

8.15 We know that some couples have had to end their marriages for one spouse to gain a GRC, and this could have had an impact on benefit rights. There are no plans to reimburse couples for any benefit rights they believe they would have been entitled to or to enable couples to have their previous relationship status reinstated. We propose to treat same-sex couples in a marriage, as civil partners for the purposes of state and occupational pensions. However, we propose to make an exception to this general rule to ensure that state pension for a married woman based on a husband's National Insurance contributions is not affected if her spouse gains a GRC after they are married.

8.16 We will continue to work closely with the GRP and representative organisations of transsexual people and their spouses to ensure that the system works effectively, while adding as few additional processes as possible. This would include issues such as the date which would appear on marriage certificates for couples, where one party gained a GRC: for example, the date of the original marriage ceremony. We remain mindful of the wish not to expose a person's transsexual history unintentionally. We will therefore continue to work with representative organisations as we finalise this policy to ensure it works in practice for all parties.

8.17 Marriage is a devolved matter and therefore, couples who enter into their marriage in Northern Ireland will not be able to remain in their marriage when one spouse is seeking to obtain a GRC. Marriages entered into in Scotland are dealt with by the Scottish Government which will set up their own procedures.

Wider issues

9.1 There are several additional issues to be considered when enabling same-sex couples to get married.

Respondents were given the opportunity to comment on these issues in question 14 of the consultation ("Do you have any comments on the assumptions or issues outlined in this chapter on consequential impacts?")

Administrative processes for marriage and civil partnerships

9.2 Overall the administrative processes will remain the same for marriages and civil partnerships. The vows which are spoken as part of the marriage ceremony are able to remain the same, with couples being referred to as 'husband' and 'husband', or 'wife' and 'wife' for legal purposes. Requirements and restrictions around age, parental consent and family links will all remain as now. For example, no one will be able to marry or enter into a civil partnership with a sibling, or with someone below the age of consent.

9.3 It is currently possible for UK citizens to get married, or enter into a civil partnership, in British Consulates. This can take place only with the agreement of the host nation, and where it would not be possible for the couple to enter a marriage or civil union under the laws of that country. We will extend this to include marriages of same-sex couples, although it is too early to say in which countries this will be available. It may also be possible to convert civil partnerships which have taken place within British Consulates and details of the process by which this may be done will set out at a later date.

Devolution

9.4 Marriage is devolved in Scotland and Northern Ireland which means that the Scottish Government and Northern Ireland Executive can decide how to shape marriage and civil partnership law within their jurisdictions. These proposals cover England and Wales only.

9.5 A few respondents raised issues relating to devolution. Where there is any consideration for devolved areas (such as the conversion of civil partnerships), this is reflected under the relevant section of this response.

9.6 On 25 July 2012 the Scottish Government announced its plans to enable same-sex couples to get married. While marriage is devolved, there are several other areas of Government policy which are reserved (such as equalities and pensions). Therefore the UK Government is working closely with the Scottish Government to ensure the two systems are compatible and that any amendments needed to UK legislation are made through the Parliament at Westminster. We will ensure that marriage of same-sex couples is recognised across the border between England, Wales and Scotland.

9.7 Northern Ireland has no current plans to consult on or introduce marriage for same-sex couples. However, there are important areas which remain reserved matters for the UK Government and therefore we are working closely with the Northern Ireland Executive to ensure their position is not compromised. It will be for the Northern Ireland Executive to determine how it recognises marriages conducted in England or Wales for same-sex couples, but we believe they will be treated as civil partnership.

Adultery and non-consummation

9.8 One of the differences between marriages and civil partnerships concerns dissolution, divorce and annulment. Currently the concepts of non-consummation[10] and adultery are defined by case law and apply only in relation to marriage, not civil partnerships. We had proposed to allow case law to develop in order to create a 'new' definition of non-consummation and adultery for same-sex couples.

9.9 However, the responses received from the Catholic Bishops' Conference of England and Wales and the Family Law Bar Association, amongst others, showed that it would not be acceptable to leave such uncertainty in the law. There was concern also raised by some, including the Family Education Trust, that the concept of consummation would be removed from matrimonial law in its entirety. While it is not currently a legal requirement to consummate a marriage prior to it becoming legal[11], we are clear that there is no intention to remove references to non-consummation from legislation.

9.10 Therefore, in respect of non-consummation, we are proposing to create an exception for same-sex couples in a marriage, meaning that they would not be able cite non-consummation as a basis for annulling their marriage. Same-sex couples cannot currently annul their civil partnership on the basis of non-consummation. Opposite sex couples will continue to be able to annul their marriage on the grounds of non-consummation. By maintaining this position, we are not altering the legal position unnecessarily.

9.11 We are proposing to maintain the current position with regards to adultery in marriage. This means that anyone, including same-sex couples, will be able to cite adultery to end their marriage if the behaviours currently defined in case law are exhibited[12]. In practice this would mean for a same-sex married couple that, where one partner had sexual intercourse (within the meaning of the law for these purposes) with someone of the opposite sex, the other partner could cite adultery as grounds for

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10 Consummation is defined in English common law. Consummation requires 'ordinary and complete' sexual intercourse. Penetration for a short period without emission inside or outside the wife has been held to be incomplete intercourse and, therefore, not consummation of a marriage (see W (otherwise K) –v- W [1967] 3 All ER 178n).

11 A couple can agree not to consummate their union. The grounds for citing non-consummation also include what could be reasonably expected from that relationship.

12 Adultery is currently defined as follows: there must be at least partial penetration of the female by the male for the act of adultery to be proved. The attempt to commit adultery must not be confused with the act itself, and if there is no such penetration, some lesser act of sexual gratification does not amount to adultery (c.f. Dennis v Dennis [1955] 2 ALL ER 51 2WLR 817).

divorce. If the behaviour exhibited fell short of the current legal definition of adultery, it would remain the case that this could be cited as unreasonable behaviour, as is the case with civil partnerships. In this way we believe that the current legal position on the meaning of adultery need not be changed. It will remain the case that a same-sex couple in a civil partnership will not be able to cite adultery to end their civil partnership[13].

International

9.12 Overseas marriages between opposite-sex couples are treated as marriages in England and Wales (unless a court determines that they do not meet certain criteria). However, for same-sex couples, provision is required to ensure that legal relationships which are formed abroad are treated within the UK as civil partnerships. Currently all same-sex unions formed abroad (whether they are called marriage or otherwise) are treated as a civil partnership within the UK (as long as they meet statutory criteria). Schedule 20 (and section 214) to the Civil Partnership Act 2004, outlines the same-sex unions formed abroad which are treated as civil partnerships in the UK. The Government has recently updated Schedule 20.

9.13 We propose to recognise overseas marriages of same-sex couples as marriages in England and Wales (unless a court determines that they do not meet certain criteria), in line with opposite sex marriages; and to recognise other overseas same-sex civil unions as UK civil partnerships, as now. In our treatment of overseas same-sex unions, we do not currently differentiate between those entered into via a religious ceremony or civil ceremony and this will continue to be the case.

9.14 Whilst other countries are under no obligation to treat same-sex unions (either marriage or civil partnerships) as legal relationships, the Government has and will continue to work with other countries, where appropriate, to ensure that same-sex couples can have their UK formed marriage or civil partnership recognised outside the UK.

9.15 The Government recognises that same-sex couples who enter into a marriage in England and Wales but remain habitually resident or domiciled in another country may not be able to end their marriage in that country if it does not legally recognise their union. Accordingly, the Government proposes to provide a "jurisdiction of last resort" so that those same-sex couples who are unable to divorce where they are resident are able to end their marriage in England and Wales.

Pensions

9.16 Pension entitlements were raised by a number of organisations in their responses to the consultation, including the Association of Pension Lawyers and a number of organisations representing transsexual people.

9.17 The Government is working towards full equality across State pension schemes for men and women, whatever their sexual orientation. However, married men, widowers and male and female civil partners have slightly more restricted access to state pension based on their spouse's or partner's

13 However, couples could use the same evidence to prove unreasonable behaviour to end their civil partnership.

National Insurance record than married women and widows[14]. These differences reflect historical differences in the working patterns and contributions of men and women. When civil partnerships were introduced, the differences were not replicated, because to do so would have created a new difference in treatment based on gender between male and female civil partners.

9.18 The Government's intention, as regards State pensions, is to treat same-sex married couples in the same way as civil partners. The reasons for this approach are:

- differences in the treatment of men and women are a legacy from the past and will eventually cease to exist.
- we believe it is inappropriate to create new differences in treatment between men and women when the Government is otherwise seeking to equalise treatment.
- pensioners on low incomes will, of course, continue to be entitled to pension credit (which in future will incorporate housing benefit) and support with council tax.

9.19 There is also a difference in treatment in occupational pensions as between men and women, reflecting a legacy from the past. The Government's intention, as with State pensions and for similar reasons to those set out above, is to treat same-sex married couples in the same way as civil partners. Since the introduction of civil partnerships, companies which offer survivor benefits for spouses as part of a defined-benefit occupational scheme have been required to extend survivor benefits to civil partners. The Government intends to align the rules for same-sex married couples with those for civil partnerships, for these purposes. The reasons for this approach are:

- The alternative approach, to equalise treatment of all same-sex couples, in a civil partnership or marriage, with that of opposite-sex couples would entail an unforeseen retrospective cost to schemes in a challenging economic climate when schemes are already under significant pressure.
- In practice, many schemes (we estimate two-thirds) choose to pay exactly the same survivor benefits to spouses, civil partners, unmarried partners and unmarried same-sex couples on a voluntary basis.

9.20 Both state pensions and occupational pensions requirements are matters which are reserved to the UK Government, except in Northern Ireland. Therefore, the plans outlined below will cover Great Britain, rather than just England and Wales.

9.21 Policy on public service pension scheme in the UK is reserved to the UK Government. Those schemes where policy is reserved will treat same-sex married couples as civil partners. This means, that for the majority of schemes, survivor benefits for same-sex married couples will apply from 6 April 1988[15].

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14 A married woman with less than £64.40 basic pension in her own right can qualify for a basic pension of up to that amount based on her husband's NI contributions regardless of when he was born. But a married man or civil partner can qualify only if their wife or partner was born after 5 April 1950. A woman widowed over pension age whose husband dies under pension age may inherit part of his additional state pension, but a widower or surviving civil partner in the same circumstances may inherit additional state pension only if they reach pension age after 5 April 2010.

15 This was the date when survivors' rights were equalised for widows and widowers.

9.22 For those public service schemes where policy is determined by the Devolved Administrations, it will be for those bodies to make decisions on how the introduction of same-sex marriage should be reflected in those schemes.

Terminology

9.23 Concerns were raised that the terms 'husband' and 'wife' would be removed from use as a result of allowing same-sex couples to get married – this is not the case. On the contrary, these proposals will allow more people to use those terms. Couples will continue to be able to call each other whatever they wish in their personal life, and in legal and official documents, the terms husband and wife will continue to be used.

Free speech

9.24 We know that the doctrines of many faiths hold the view that marriage can only be between a man and a woman. We are clear that no one should face successful legal action for hate speech because they preach the belief that marriage can only be between a man and a woman.

9.25 The current legislation on hate speech, regardless of whether this is within a religious context or not, will remain the same as it provides adequate protections. While we acknowledge and protect the right of people to express the view that marriage should only be between a man and a woman, this does not mean hate speech is legally permitted or supported.

Education

9.26 A number of people raised queries about teachers being required to teach that marriage could be between two people of the same sex. Most of these respondents were against the proposals and particular points were raised in relation to faith schools.

9.27 Every school is required to ensure pupils are not taught anything that is inappropriate to their age, religious or cultural background. This will not change and pupils will continue to receive broad and balanced advice on marriage.

9.28 In addition, teachers, particularly in a faith school, will be able to continue to describe their belief that marriage is between a man and a woman whilst acknowledging and acting within the new legislative position which enables same-sex couples to get married. They must continue to act within the current parameters of legislation on hate speech and discrimination law.

9.29 Teachers are expected to respect the rights of others and to respect those with different beliefs. They should ensure that their personal beliefs are not expressed in a way that exploits pupils' vulnerability or involves discriminating against them. That does not mean, however, that teachers need to agree with the views of others or with the way in which other people exercise their rights. It should always be a matter for the head teacher to determine what teachers under their control should be teaching and what is expected of their staff.

Parenting

9.30 The consultation looked at enabling same-sex couples to get married and the proposals in it do not alter the rights or responsibilities relating to parenting. The Government supports all families

including same-sex parents and we do not accept that children suffer worse outcomes when raised by same-sex parents. Barnardo's commented that:

> "Raising children is about providing emotional security and developing a positive approach to parenting by being a good role model; encouraging good communication; and challenging bad behaviour. These are qualities that can be found in couples, whether they are lesbian, gay, bisexual, transgender or straight".

9.31 The issue of parenting was raised in a few responses – with the majority in favour of the proposals. However, concern was raised, including by the Society for the Protection of Unborn Children that:

> "Marriage exists to protect the identity of children …. Children do better in terms of health, happiness and education, when bought up by their married, biological parents".

9.32 There is also no intention to remove the terms mother and father, or replace them with terms like 'Progenitor A and Progenitor B' as was raised by some organisations including the Family Education Trust.

Health

9.33 The Royal College of Psychiatrists stated that a "body of research has established the relative health disadvantage borne by LGB people". A number of responses, including that of the Royal College of Psychiatrists, cited the physical and mental health benefits of allowing same-sex couples to get married. Amongst other pieces of evidence, they quote the research of Hatsenbueler et al, (2011) which showed that in the 12 months after the introduction of marriage equality in Massachusetts, gay men recorded significantly fewer visits to health facilities for mental or physical health reasons and that health costs consequently fell.

Costs and benefits

9.34 Question 16 asked for any information on potential costs and / or benefits on allowing same-sex couples to get married. We received no significant information which changed the assessment of the present net value of this policy which was published in the impact assessment when the consultation was launched (£3.7m). In line with requirements we will publish an updated impact assessment when the legislation is introduced to Parliament.

Annex A –Petitions

Received From	Petition premise	Number of Signatures
All Saints Presbytery Bakewell	The voluntary union for life of one man and one woman	27
An Individual	Our Country is predominantly Christian, therefore we should follow those teachings	14
An Individual	It is not the role of the state to redefine marriage	9
An Individual	Marriage is a union between one man, one woman ordained by God	69
An Individual	Religious arguments that homosexual practices are sinful	47
An Individual	It is against the dignity, status and privileges of heterosexual marriage	13
An Individual	Majority of British people are against changing the definition of marriage	24
Church Leaders, Tunbridge Wells	Marriage is a union between one man, one woman ordained by God, teachers will face conflicts in schools, parents will be labelled homophobic for upholding religious beliefs, expensive and time consuming for parliament, only gain is a word: CPs are already the same as marriage legally, disregard for due process of consultation / undemocratic	20
Coalition for Marriage	In support of the legal definition of marriage which is the voluntary union for life of one man and one woman	509,800
Concerned Christians – Belfast	Erosion of liberties, institution created by God for man and Woman, erosion of societies values	91

Received From	Petition premise	Number of Signatures
Coventry Asian Christian Fellowship	Marriage is a union between one man, one woman ordained by God	26
Drimbolg Reformed Presbyterian Church	Marriage is a union between one man, one woman ordained by God	44
General Presbytery of Ulster	The voluntary union for life of one man and one woman	1643
Lisnadill Full Gospel Church, Northern Ireland	Legalising equal marriage is offensive to God – minority issue	91
Norwich Independent Methodist Church	Against change in definition	7
Petition against Same-Sex Marriage Preston/Manchester	Outside Government's competence to change the traditional structure of Marriage. Minority abuse of the Equality Act	15
Postcard Petition	The voluntary union of one man and one woman	40
Real Marriage	The voluntary union for life of one man and one woman	1028
St Peter's Church – Rickerscote	Marriage is a union between one man, one woman ordained by God	19

Annex B – Analysis of responses

Who responded?

We were not able to analyse the personal data of those who responded through formats other than online, such as email or letter, as this information was generally not provided

The online form asked a number of questions about those who responded. From this data, we know that:

- 52% identified as heterosexual or straight
- 69% identified as aged 40 or under
- 59% have never been married or in a civil partnership
- 41% identified as Christian.

These provisions affect England and Wales only, but we accepted and considered responses sent from outside England and Wales. This is because there will be individuals in, for example, Scotland or Northern Ireland, or expatriates living overseas who might be affected by the proposals.

In line with other consultations, safeguards were put in place to reduce multiple responses by allowing only one response to be submitted from one computer. While restricting multiple responses from an individual computer was a reasonable precaution to limit the number of duplicate responses received, it was not reasonably possible to stop individual people responding multiple times through a variety of methods.

We have always been clear that consideration will be given to the whole range of views submitted rather than simply the number of responses received.

In total 53% of responses supported and 46% of responses opposed introducing civil marriage for same-sex couples. Within these responses:

- 85% of those responding via the online consultation form supported allowing couples to have a civil marriage ceremony regardless of gender.

- 89% of those responding via email and 94% via correspondence opposed the proposals to allow couple to have a civil ceremony regardless of gender (including where answer was inferred from the text submitted).

Three groups of emails were identified: emails which answered some or all of the specific questions posed by the consultation; emails sent in support of a campaign; and, all other emails. Of the 91,000 emails, 84% said in their subject title that the email was part of a campaign. There were 2 separate campaigns:

- 99% of the campaign emails were opposed to allowing couples, regardless of their gender, to get married.
- 99% of the emails which either used the consultation form or answered a specific question asked in the consultation were opposed to same-sex couples getting married.
- 87% of all other emails supported the introduction of same-sex civil marriage.

These were all considered as part of the Government response and the methodology below was used to ensure they were all considered fully. We acknowledge that the answers were given based on the questions raised by the consultation, which made clear the Governments proposals. This is in line with good practice for consultation but could have affected who answered the consultation and the manner in which they answered.

Responses to specific questions

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

This breakdown includes all respondents who answered question one, either using the online form or via email or in correspondence; and, all whose responses to this question were discerned via the coding exercise[16]; but, does not include petitions, all opposed, with over 500,000 signatures.

Of the 228,000 responses:	
53%	agreed that all couples, regardless of their gender should be able to have a civil marriage ceremony
46%	disagreed that all couples, regardless of their gender should be able to have a civil marriage ceremony
>0.5%	did not know
>0.5%	did not answer this question

16 These were discerned through a coding exercise involving all free text comments from the online form, as well as comments made in emails and correspondence; respondents comments were assessed against a set of pre-defined codes designed to capture substantive issues relevant to the consultation topic

We also know from the 137,000 respondents who answered at least one of the other specific questions that:	
99%	of those who identified as lesbian or gay believed that all couples, regardless of their gender should be able to have a civil marriage ceremony
77%	of those who identified as heterosexual or straight believed that all couples, regardless of their gender should be able to have a civil marriage ceremony
86%	of those who said their gender identity was the same as their gender assigned at birth, believed that all couples, regardless of their gender should be able to have a civil marriage ceremony
96%	of those who said their gender identity was not the same as their gender assigned at birth, believed that all couples, regardless of their gender should be able to have a civil marriage ceremony
98%	of respondents who stated they were of no religion believed that all couples, regardless of their gender should be able to have a civil marriage ceremony
72%	of respondents who stated they were Christian believed that all couples, regardless of their gender should be able to have a civil marriage ceremony

Questions 3-13 inclusive

137,000 respondents answered at least one of the other specific questions (questions 3-13 inclusive)[17]. Below is a breakdown of respondent's answers to each of these specific questions. Each breakdown only represents the views of those respondents answering specific questions, and does not represent either the views of all consultation respondents or the general population.

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

Of the 44% of respondents who said this applied to them:	
81%	yes, I would wish to have a civil marriage ceremony
6%	no, I would not want a civil marriage ceremony
12%	don't know

17 This includes respondents who answered at least one specific question asked by the consultation in either an email or correspondence, as well as those using the online form.

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?

Of the 7% of respondents who said this question applied to them:	
84%	yes, the group of individuals I represent would wish to have a civil marriage ceremony.
6%	no, the group of individuals I represent would not wish to have a civil marriage ceremony.
10%	don't know

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

Of the 96% who responded to this question	
27%	I agree, religious marriage ceremonies should not be available to same-sex couples
63%	I disagree, I think religious marriage ceremonies should be available to same-sex couples
10%	don't know

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

Of the 94% who responded to this question	
66%	I agree, civil partnerships should be retained
20%	I disagree, civil partnerships should not be retained.
14%	don't know

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

Of the 43% of respondents who said this question was relevant to them	
6%	would prefer a civil partnership
81%	would prefer a civil marriage
7%	no preference
6%	don't know

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

Of the 94% who responded to this question	
24%	agreed, that civil partnerships should not be made available for opposite-sex couples
61%	disagreed, and thought civil partnerships should be made available for opposite-sex couples
15%	don't know

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?

Of the 17% of respondents who said this question was relevant to them	
87%	would take advantage of this policy
6%	would not take advantage of this policy
8%	don't know

Question 10: We would not propose introducing a time limit on the ability to convert a civil partnership into a marriage. Do you agree or disagree?

Of the 93% of people who responded to this question	
81%	agreed there shouldn't be a time limit
7%	disagreed there should be a time limit
12%	did not know

Question 11: Do you think there should be an option to have a civil ceremony on conversion of a civil partnership into a marriage?

Of the 94% who responded to this question	
81%	yes, there should be an option of a ceremony
9%	no, there should not be an option of a ceremony
10%	did not know

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?

Of the 3% of respondents who said this question was relevant to them	
79%	yes, they would take advantage of the policy
7%	no, I would not take advantage of the policy
14%	did not know

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?

Of the 3% of respondents who said this question was relevant to them:	
79%	yes, they would take advantage of their policy
7%	no, they would not take advantage of their policy
14%	did not know

Assessing responses

Response to consultation questions: The consultation posed a number of specific questions as outlined above. Online responses were stored electronically and analysis of these responses to specific questions could be collated automatically using the survey tool used in data collection. However, some respondents responded to the consultation questions via correspondence or email; responses to specific questions received this way were manually added into the survey tool and included in the overall collation.

Open-ended responses: The consultation also asked four open questions, responses to which were captured as part of the process of understanding the overall response to the consultation. Respondents' views were discerned through a coding exercise which involved reading all free text comments from the online form, and all comments made in emails and correspondence. Respondents' comments were then assessed against a set of pre-defined codes designed to capture substantive issues relevant to the consultation.

The coding was completed by a dedicated and trained team of coders. A sample of all responses was checked to ensure that the coding was correct. This was done on a daily basis.

Codebook

All open-ended responses were considered using a codebook specifically designed to enable collation of this large volume of material. This allowed us to categorise the responses given under a number of overarching themes under the general headings of 'Supportive', 'Not supportive', other codes, issue codes, and cost benefit codes.

The codebook included a set of codes which were developed to indicate what substantive issue(s) pertinent to the consultation had been raised. This was done by selecting a random 1,000 sample of responses, from across the range of response types (online, email, correspondence), and drawing out

each pertinent issue raised in these responses, which were then allocated to overarching themes. A catalogue of these codes (referred to as a 'codebook') was then developed based on these themes, which listed all the relevant codes to be used and provided more detailed examples of these. Categories of codes were developed to cover:

i. points which were supportive of the proposal to introduce equal civil marriage;
ii. points which were not supportive of the proposal to introduce equal civil marriage;
iii. other comments about the proposal and not covered by the above
iv. comments about consequential impacts of introducing equal civil marriage
v. comments about the costs and benefits of introducing equal civil marriage
vi. process codes which captured detailed comments about costs and benefits and included a 'unique' code to capture comments not already covered by i-v.

Further detail on the codes is in the table below:

i Supportive	• Democratic / equality arguments in favour of equal civil marriage • Argument on the importance or the nature of marriage for ALL couples (not based on religious doctrine) • Equal marriage will be good for wider society / the UK • Supportive of equal marriage because of religious doctrine • Belief that religious bodies ought to be allowed to marry same-sex couples if they wish to • Civil partnerships are different to marriage, and therefore same-sex couples should be able to get married
ii Not supportive	• Dispute the democratic / equality arguments in favour of equal marriage • Argument on the importance or nature of marriage – excluding same-sex couples (not based on religious doctrine) • Equal marriage will be bad for society / the UK • Against equal marriage because of religious belief or doctrine • Religious bodies feel they will be forced to marry same-sex couples, even if they do not want to • Civil partnerships are equivalent to marriage and therefore equal marriage is not needed, as there is no additional benefit
iii Other comments	• Believe civil partnerships should be opened up to opposite sex couples • Do not believe that civil partnerships should be open to opposite sex couples • Believe civil partnerships should be removed • Believes civil partnerships should remain • There is no democratic mandate / demand for equal marriage • Against all marriage • Believe that all religious organisations should / must conduct religious marriage ceremonies for same-sex couples • Issues raised relating to gender reassignment

iv specific issues raised	• Pensions • Administrative processes for marriage and civil partnerships • International recognition • Devolution • Change to other legislation required • Tax and benefit rights • Parenting rights (including adoption and registration of birth) • Immigration rules • Ability for religious organisations to preach and teach their beliefs on the definition of marriage • Teaching of same-sex marriage in schools • Non-consummation and adultery laws
v issues of cost / benefit raised	• Pensions • Administrative processes for marriage and civil partnerships • Tax, welfare and other benefits • Living costs • Income • Private sector • Public sector (including references to Government resources)
vi process	• Detailed technical response to ISSUE or COST/ BENEFIT • Problem with consultation document/ process/ questions • Second reading required • A non-violent or violent threat • Unique

To analyse the free text responses a set of codes to summarily capture a response was developed. Codes were developed which indicated what substantive issue(s) pertinent to the consultation had been raised. This was done by selecting a random 1,000 sample of responses, from across the range of response types (online, email, correspondence), and drawing out each pertinent issue raised in these responses, which were then allocated to overarching themes. A catalogue of these codes (referred to as a 'codebook') was then developed based on these themes, which listed all the relevant codes to be used and provided more detailed examples of these. Categories of codes were developed to cover:

i. points made in support of the proposal to introduce equal civil marriage;
ii. points made against the proposal to introduce equal civil marriage;
iii. other comments about the proposal and not covered by the above
iv. comments about consequential impacts of introducing equal civil marriage
v. comments about the costs and benefits of introducing equal civil marriage
vi. process codes which captured detailed comments about costs and benefits and included a 'unique' code to capture comments not already covered

When referring to the figures from this coding, we have used the following quantification scheme, to reflect the interpretative nature of this analysis.

Almost all – 90% and above
Most – 75% to 89%
The majority – 50% to 74%
Many – 33% to 49%
Some – 10% to 32%
A number – 4% to 9%
A few – 0.1% to 3%

Issue and cost / benefit codes

Following the general analysis of all responses, the 19,639 responses which included 'issue codes' and 4844 responses which included 'cost benefit codes' were then further considered to extract the specific points and suggestions raised. These were then included within this response document, and also used to inform the Impact Assessment.

Reponses from organisations

The responses received from organisations which identified themselves were analysed using the codebook as described above. These responses generally contained a great deal of detail, as they were received from organisations with a large amount of expertise in their area. They were all considered and taken into account when finalising the proposals.

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