

## **The LGBTory view of tabled amendments to the Marriage (same sex couples) Bill**

### **Government Amendments**

#### **Review of civil partnerships**

New Clause 16 commits the Government to undertake a formal review of the future of civil partnerships once the effect of extending marriage to same sex couples has been assessed. We believe this is the right way round to proceed and so we recommend to **VOTE YES**.

#### **Religion**

Amendment 23 protects ministers of religion employed by secular organisations (eg as hospital or university chaplains) who refuse to carry out same sex marriages from claims being made against them personally under the employment provisions of the Equality Act 2010. We believe that the same protections afforded to religious organisations as a whole should also apply to individual members when employed in the secular world and so recommend to **VOTE YES**.

Amendment 24 requires, rather than (as the Bill does at present) allows, the Lord Chancellor to make an order enabling the Church in Wales to marry same sex couples, if he is satisfied that the Church has resolved to do so. We believe this adds to the religious freedoms already afforded in the Bill and so recommend to **VOTE YES**.

Amendment 25 ensures that, where ecclesiastical law refers to marriage, it means opposite sex marriage only. Again, this is important for religious freedom and so recommend to **VOTE YES**.

#### **Devolution**

Amendments 26 and 29 require the Secretary of State or Lord Chancellor to obtain the consent of Scottish Ministers before making any order or regulations under the Bill which do something which would otherwise be within the legislative competence of the Scottish Parliament. As these are devolved matters, we recommend to **VOTE YES**.

Amendments 27 and 28 require the Secretary of State or Lord Chancellor to obtain the consent of the Department of Finance and Personnel (in Northern Ireland) before making any order or regulations under the Bill which do something which would otherwise be within the competence of the Northern Ireland Assembly. As these are devolved matters, we recommend to **VOTE YES**.

Amendment 48 requires Scottish Ministers and/or the Department of Finance and Personnel to be consulted before a recommendation is made to Her Majesty on an Order in Council relating to consular marriages and marriages of armed forces personnel on bases overseas, where the Order does something which would otherwise be within the legislative competence of the Scottish Parliament and/or Northern Ireland Assembly. As these are devolved matters, we recommend to **VOTE YES**.

## **Pensions**

Amendments 40, 41, 42, 43, 44, 45, 46 and 47 protect occupational pension entitlements of a surviving spouse where their deceased spouse had changed legal gender and the marriage was preserved. Pension protection is an important part of a marriage and so we recommend to **VOTE YES**.

## **Technical**

Amendments 30, 31 & 32 remove unnecessary drafting. We recommend to **VOTE YES**.

Amendments 33, 34, 35, 36, 37, 38 and 39 ensure that existing provision on matrimonial proceedings applies properly to same sex marriages, in particular to ensure that such proceedings relating to a same sex marriage in England and Wales can be stayed when there are other court proceedings at the same time outside England and Wales about that same sex marriage. The amendments also enable proceedings for presumption of death orders to function whether or not the Presumption of Death Act 2013 is in force when this Bill comes into force as an Act. As this ensures both opposite-sex and same-sex marriages are treated in the same way we recommend to **VOTE YES**.

## **New Clause 1 & Amendment 1**

Not a Government Amendment

New Clause 1 and amendment 1 seek to provide that no school be required, as a result of guidance issued by the Secretary of State for Education, to promote views about same sex marriage which go against the religious designation of the school. Although we believe that an individual religious institution should not be stopped from teaching its own view of marriage, to ignore same-sex marriages, we believe, would be a mistake and so we recommend to **VOTE NO**.

## **New Clause 2, 3 and Amendment 3**

New Clause 2, New Clause 3 and amendment 2 follow on from similar amendments debated in Committee and are intended to prevent marriage registrars from being required to conduct marriages of same sex couples where the registrar has a conscientious objection. We do not consider it right that public servants should be able to pick and choose who they will perform their duties for, and so not believe that such an exemption would be justified and so we recommend to **VOTE NO**.

## **New Clause 4, 5 and 6 & Amendment 3**

New Clause 4, New Clause 5, New Clause 6 and amendment 3 seek to amend the Equality Act 2010 to ensure that any criticism of same sex marriage in itself cannot be challenged under that Act. It is clear that the belief that marriage should only be between a man and a woman is a perfectly lawful belief and it will remain so once the Bill is enacted. The Equality Act already prohibits detrimental treatment of a person because of their religious or philosophical beliefs and so we recommend to **VOTE NO**.

### **New Clauses 7, 8 and 9 and Amendments 4, 5 and 6**

New Clause 7 seeks to prevent any legal action being brought against a religious organisation or person who refuses to conduct a same-sex religious marriage. We believe that there are sufficient protection in this Bill to ensure that religious organisations have to opt-in rather than opt-out and so we recommend to **VOTE NO.**

Amendment 4 seeks to clarify that a person refusing to opt in does not breach the Equality Act. However, the Bill is already completely clear that no one may be compelled to conduct a same-sex religious marriage, so any claim would already be swiftly struck out by the courts. We therefore recommend to **VOTE NO.**

New Clause 8 and amendment 5 attempt to clarify the extent of religious protections in the Bill, by setting out the forms of 'compulsion' by which someone might try to force another to opt in or participate in a religious same sex marriage ceremony. We do not believe that these amendments would not increase the protection the Bill offers and so recommend to **VOTE NO.**

New Clause 9 and amendment 6 seek to require a referendum in England and Wales on plans to legalise same sex marriage. The referendum would be held on the same day as the next General Election. As this would delay marriage of same sex couples, we believe this is unacceptable. We also note that referendums are usually reserved for matters of constitutional significance and so recommend to **VOTE NO.**

### **New Clauses 10, 11, 13 and 14**

New Clauses 10 and 11 would extend civil partnerships to opposite sex couples. We do not believe that this Bill is the appropriate route to extend such a scheme. We are satisfied that the new Clause 6 (see above) is the best way to go about reviewing Civil Partnerships at a future time and so recommend to **VOTE NO.**

New Clause 13 would repeal the Civil Partnership Act 2004. It would thus bar same sex couples from entering into new civil partnerships and leave those in existing civil partnerships without a legally recognised union. We do not believe this to be appropriate at this point in time and so recommend to **VOTE NO.**

New Clause 14 repeals the Marriage Act 1949, removing the route to legal solemnization of marriage both by civil and religious means and the registration of marriage. It would replace the legally recognised institution of marriage with a new status of "civil union" for both opposite sex and same sex couples. We do not believe a new status of civil union is desirable, note that it would be potentially damaging to the institution of marriage and so recommend to **VOTE NO.**

### **New Clause 15, amendments 19, 20 and 21 and New Schedule 1**

New Clause 15, amendments 19, 20 and 21 and New Schedule 1 relate to Humanist weddings. In the spirit of religious freedoms and of marriage for all, we believe that it is right for humanist groups, just as religious ones, to be able to perform same sex marriages if they so wish. We therefore recommend to **VOTE YES.**

## **Amendments 10, 11, 12, 13, 14, 15, 16, 18, 22 & 49**

Amendment 10 removes adultery as a grounds for divorce for marriage of both opposite sex and same sex couples. It also removes non-consummation as a ground for voiding an opposite sex marriage. We oppose these amendments as the concepts of adultery and non-consummation are important for opposite sex couples under current divorce law and we believe that the way this is handled in respect of same sex married couples in the Bill is the correct one. **VOTE NO**

Amendment 11 removes the provisions for anyone to be married under the rites and usages of the Church of England and Church in Wales (contained in Part 2 of the Marriage Act 1949). We do not believe that this Bill is the appropriate one to make any such changes and so recommend to **VOTE NO**.

Amendment 12 seeks to remove the provision in the Matrimonial Causes Act 1973 that makes a marriage voidable where a transsexual person marries a non-transsexual person but does not inform that person of their transsexual status prior to or at the time the marriage takes place. We oppose this because the provision in the Matrimonial Causes Act and in the Civil Partnership Act provide important protection for non-transsexual spouses who find themselves in a marriage that they did not fully consent to, or that they object to, for (say) religious reasons and so recommend to **VOTE NO**.

Amendments 13 and 14 seek to remove the provision in Schedule 5 to the Bill that requires a non-transsexual spouse to issue a statutory declaration of consent to the marriage continuing after their spouse changes their legal gender. The amendments would enable all transsexual people in protected marriages to stay married following gender recognition, irrespective of the non-transsexual spouse's views. Many transgendered people find that, upon their "coming out", their partner becomes hostile toward them. Many couples do not survive a partner transitioning, and amicable divorces in this situation are rare. In situations where getting a spouse to allow a trans person to see their own child is impossible and former partners outright refuse to sign divorce documents, making a trans person get the permission of their former partner before they can enjoy the same rights as everyone else is unfair. We therefore recommend to **VOTE YES**.

Amendment 15 to clause 9 of the Bill applies to couples who annulled their marriage to enable one party to obtain gender recognition and who subsequently entered into a civil partnership. The amendment would allow the couple to convert that civil partnership to a marriage and have that marriage held to be continuously valid from the date of the original marriage. We believe this to be an important measure for those couples affected and so recommend to **VOTE YES**.

Amendment 16 provides a power for the Registrar General to make regulations about the issuing of new marriage certificates to transsexual people and amended birth certificates for the children of transsexual people to reflect the transsexual parent's acquired gender. The Bill already provides powers to enable the Registrar General to make regulations about the issuing of marriage certificates to transsexual people. However, these regulations will not extend to enabling new marriage certificates to reflect the registration date of any annulled. The Government also cannot agree to amending the birth certificates of the children of transsexual people, because the Gender Recognition Act 2004 makes clear that gender recognition does not affect the status of the transsexual parent as the father or mother of the child. We recommend to **VOTE NO**.

Amendment 18 would enable couples who annulled their marriage so that one party could obtain gender recognition to be compensated from public funds by £1,000, in recognition for the distress caused and

costs incurred as a result of the annulment. Compensating couples for ending their marriage under the law which applied at the time seems inappropriate and so we recommend to **VOTE NO.**

Amendment 22 applies to couples who annulled their marriage to enable one or both parties to obtain gender recognition but continued to live together as a couple. The amendment would enable these couples to apply to reinstate the annulled marriage from the date on which the couple make their application. The argument against the amendment was that “we can't re-write history”, but that's exactly what the Gender Recognition Certificate (GRC) does. GRCs allow new birth certificates to be issued to transgendered people showing their acquired sex rather than their physical sex at the time of birth. We therefore recommend to **VOTE YES.**

Amendment 49 would remove the exception in the Equality Act that allows occupational pension schemes only to take into account accruals from 2005, for the purpose of survivor benefits, for those in a civil partnership. It also removes the provision in this Bill which extends this provision to same sex married couples. This is an inequality created at the time of Civil Partnerships and we believe this is time to end it. We believe that exactly the same pension rights should exist for those in a same-sex marriage, just as in an opposite-sex one. We therefore recommend to **VOTE YES.**

**LGBTory – The Conservative LGBT group – 19 May 2013**