



## Response from the Catholic Bishops' Conference of England and Wales to the Government Consultation on "Equal Civil Marriage"

June 2012

### Introduction

1. There is a common and instinctive understanding of the meaning of marriage, shared by people of any religion and none. It pre-dates the Church, and its essence is captured in the commonly understood definition of marriage as the voluntary union for life of one man and one woman to the exclusion of all others.
2. This understanding of marriage has been the constant teaching of the Catholic Church. The Catechism states:  
"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."<sup>1</sup>

Marriage, and the family life which is integral to it, has and continues to form a real unit which must be protected by society because together they constitute the living nucleus of the succession (procreation and education) of human generations.

3. It is an understanding which the Church believes is still of vital importance for the common good of society today:  
"We have a positive idea to offer, that man and woman are made for each other ... that marriage develops, first of all as a joyful and blessing-filled encounter between a man and a woman, and then, the family, which guarantees continuity among generations and through which generations are reconciled to each other and even cultures can meet."  
*Pope Benedict XVI*<sup>2</sup>

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<sup>1</sup> Catechism of the Catholic Church, §1601

<sup>2</sup> Press interview, Castel Gandolfo, 5 August 2006

## **The government's Consultation**

4. The primary question of the government's consultation on its proposal to legalise same-sex marriage states: "Do you agree or disagree with enabling all couples, regardless of their gender, to have a civil marriage ceremony?"
5. Although this question appears to be asking about the principle of whether same-sex marriage should be legalised, the government's published documentation on redefining marriage states clearly that the consultation is concerned with how legislative change could best be achieved and not with whether or not such change should happen. In fact, the government is proposing a fundamental change to the basic understanding of marriage and concomitantly a radical change in social policy. Once such a legislative change is made, it will not be reversible and the consequences of the change will not be able to be controlled or predicted by the government.
6. The burden of proof for serious changes to the law falls to those proposing the innovations. The radical change in social policy being proposed by the government requires very careful thought and analysis. The government's proposals for such change and innovation in marriage should be open to extensive discussion and debated thoroughly, prior to the announcement of its determination to instigate legislative change.
7. It is of serious concern to the Bishops therefore that this proposal, which has the potential to impact so immensely on the social stability of our society and which has significant implications for the unique institution of marriage and of family life, appears not to have been subject to such careful study and analysis. The proposal for same-sex marriage legislation is based only on two very brief Party Conference announcements. There has been no Royal Commission, no manifesto commitment, no Green Paper and no White Paper.
8. In considering the responses the consultation document says that the government will consider the points made, 'not the number of responses received'. As the government has no electoral mandate for this policy, and at no time has set out in full the arguments in favour of such a significant social change, it should reflect very carefully not only on the points made by those who object, but also on the number of individuals who make them.

## **Understanding Marriage**

9. It is to be regretted that nowhere in the government's consultation document is there evidence of an understanding of marriage as an institution, as distinct from the civil legal form by which marriage is contracted, and the contribution that the institution of marriage makes to society and the common good.

10. The institution of marriage has intrinsic characteristics which contribute not only to the building up of the unitive relationship between husband and wife but also the relationships they have with any children of their marriage, with their extended family, their local community and with the wider society in which they live.
11. In this view, marriage is essentially conjugal and social, and derives its meaning from its function as the foundation of the family. Marriage joins husband and wife in a life-long bond that is ordered essentially, if not in every instance, to their roles as father and mother and recognises their responsibilities related to procreation and generational care-giving. If the institution of marriage is significantly diminished, so will the well-being of children, the family and of society.
12. The uniqueness of the institution of marriage is based on the fact that the human person exists as both male and female and that their union for the purpose of procreation, mutual support, and love has, over the centuries of human history, formed a stable unit which we call the family. Marriage has long been recognised as a positive building block of human society and has therefore been rightly recognised by societies and cultures as worthy of legal protection.
13. The social and procreative understanding of the institution of marriage pre-dates all the cultures and societies of today. The institution of marriage has never prevented the development of other forms of friendship or human relationship within those cultures and societies but they have never been given the name of 'marriage'. Marriage is therefore unique and distinct from all other human relationships.

### **Commitment and Love**

14. The government's consultation document states that one of its reasons for legislative change to marriage is that: "...it's not right that a couple who love each other and want to formalise a commitment to each other should be denied the right to marry".
15. The argument for change is based on the understanding that marriage is essentially a matter of 'love' and 'commitment', and that the love and commitment of a same-sex couple should be recognised in the legal provision for marriage in the same way as for opposite-sex couples. Marriage, however,

is about a great deal more than simply 'love' and commitment' whether within a legal framework or outside of it.

16. Clearly, there are many other forms of relationship which demonstrate love and commitment yet are not regarded as having equality with marriage. An unmarried adult may share a home with an aged parent and care for them; this is a demonstration of love and commitment but is not akin to marriage. Similarly, two siblings may live together, pooling their financial resources and sharing their leisure interests; this too demonstrates love and commitment but is not akin to marriage.

17. The relationship constituted by the institution of marriage is distinct from all other human relationships. Its unique distinguishing characteristics centre on the biological complementarity of male and female and on the possibility of children. As the UN Human Rights Committee has stated, the right to marry 'implies, in principle, the possibility to procreate'<sup>3</sup>. Professor R.P. George of Princeton University defines it thus:

"Marriage is the community formed by a man and woman who publicly consent to share their whole lives, in a type of relationship oriented toward the begetting, nurturing and educating of children together. This openness to procreation, as the community's natural fulfilment, distinguishes this community from other types."<sup>4</sup>

18. Unmarried couples, single parents and adoptive parents provide loving homes, devoted care and a good upbringing for children, often in difficult circumstances. However, the distinctive legal recognition given to marriage by the State arises primarily because the institution of marriage in general brings unique qualitative benefits for the children and to society. A substantial body of research<sup>5</sup> shows that the best outcomes for a child are most likely to be found where a child has two parents, one of each sex, who are bound to each other in marriage. That is where children learn about what it is to be male or female, and how each sex relates to the other. The best structure suited to raising the next generation is therefore a stable marriage. Many young people still aspire to lifelong marriage for this reason.<sup>6</sup>

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<sup>3</sup> UN Human Rights Committee comment no.19

<sup>4</sup> *In defense of natural law*, Oxford, 1999

<sup>5</sup> *Why is the Government anti-Marriage?*, Centre for Social Justice, December 2009

<sup>6</sup> Friends of the Elderly survey of 4,000 young people on what they thought constituted a life well lived, May 2012 [www.fote.org.uk](http://www.fote.org.uk)

19. The government's proposal risks initiating a social change which, perhaps inadvertently, places the best interests of children to one side in focussing only on the relationship of the couple. The reality of this risk is eloquently expressed by the simple fact that children are not mentioned even once in the government's consultation document. Policy should be guided by the desire to promote justice, preserve freedom and serve the common good for all, especially the vulnerable, over the long term.

20. Laws also have a normative and pedagogical function. They encourage and teach people to see and understand things in a particular way and help shape the development of public attitudes and morals. Changing the law on marriage would, over time, inevitably influence how the public as a whole understands marriage. Marriage would become an arrangement defining the legal relationship of a couple. It would cease to be the foundation of the family. As Professors Tubbs and George put it:

“If a desire to stamp social approval on homosexual conduct and relationships leads to a redefinition of marriage that detaches it not only from biological complementarity and procreation, but also from the related norm of sexual exclusivity, what will be left of the institution?”<sup>7</sup>

### **Civil Partnerships**

21. The government's proposal for legislative change to marriage in respect to the current legal provisions for civil partnerships is unclear.

22. With the support of both of the political parties which now form the government coalition, the previous government, on grounds of equality, made full provision in the Civil Partnerships Act for same-sex couples to receive equivalent civil and legal rights afforded to married couples. When introducing this legislation the previous government also stated that it had no plan to redefine civil marriage to include same-sex couples.

23. Now, legislative change is being proposed by the present government on the basis that “having two separate provisions for same-sex and opposite-sex couples perpetuates misconceptions and discrimination”<sup>8</sup> and that it is unacceptable for same-sex couples not to have “the ability to be able to be

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<sup>7</sup> *Redefining marriage away*, Tubbs DL and George RP, City Journal, Summer 2004

<sup>8</sup> Equal Civil Marriage government consultation, Ministerial Foreword

married and to say that they are married”.<sup>9</sup> However, this argument is inconsistent with the government’s proposed legislative changes which will not make civil partnerships equally available to opposite-sex couples.

24. The logic behind the government’s proposal is open to serious question on its own terms. Changing the legal definition of marriage would deliver no legal or material benefits for same-sex couples which have not already been provided by the Civil Partnerships Act. The difference in equivalent rights and responsibilities identified in the second and third bullet points of Section 1.10 of the government’s consultation document can be met by amending the Civil Partnerships Act. They do not require the proposed legislative changes to marriage.

25. Given that the Civil Partnerships Act is now in force, there is a clear logic in restricting civil partnerships to same-sex couples and marriage to opposite-sex couples. That is the current legal status. However, if the law were to change, the result would be that marriage would be open to opposite-sex and same-sex couples but civil partnerships would be restricted only to same-sex couples. This is likely to be challenged in the European Court of Human Rights.

26. On 23 November 2010, an opposite-sex couple, Ian Goggin and Kristin Skarsholt sought and were refused a civil partnership at Bristol Register Office.<sup>10</sup> In the European Court of Human Rights the case of *Ferguson and others*<sup>11</sup> concerns four British same-sex couples and four opposite-sex couples seeking access to the marriage and civil partnerships respectively. Their application, submitted in February 2011, was drafted by Robert Wintemute, Professor of Human Rights Law at Kings College London, and centres on the argument that as marriage and civil partnerships are so similar in their effect in British law, the only reason for refusing access to either must be discrimination.

27. The Catholic Church’s position is clear; it does not give recognition to any other partnerships or legal unions as having an ethical or legal equivalence with marriage. The Church opposes therefore any change in the definition of marriage to include same-sex couples, or to extending civil partnerships to opposite-sex couples who can marry. It is almost certain though that a likely longer term consequence of the government’s proposed change in the law on marriage would also require a change to the law on civil partnerships, and one which could have significant implications.

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<sup>9</sup> *ibid*

<sup>10</sup> [http://www.petertatchell.net/lgbt\\_rights/partnerships/Heterosexual-civil-partnership-refused-in-Bristol.htm](http://www.petertatchell.net/lgbt_rights/partnerships/Heterosexual-civil-partnership-refused-in-Bristol.htm)

<sup>11</sup> <http://equallove.org.uk/2011/02/equal-love-application-to-echr/>

## **Civil and religious marriage**

28. Currently, in British law there is only one institution of marriage. For the purposes of civil law, it is the same legal commitment that takes place in a registry office as in a Church. The civil legal status of marriage is only conferred because the priest has been authorised by the Registrar General to conduct weddings in the absence of a Registrar. So, in completing the Register of marriages, the priest carries out a civil function.
29. The government's intention is to draft legal measures which would preclude same-sex marriages taking place on religious premises. This at least is to be welcomed. However, once the exclusion of same-sex marriage from taking place in religious premises is dependent on an Act of Parliament, it becomes immediately vulnerable to subsequent parliamentary Acts or amendments, as has happened in the eight short years between the introduction of civil partnerships and the proposals for same-sex marriage. As no Parliament can bind its successors, the Catholic Church and other religious bodies would be at risk indefinitely. Furthermore, a provision which prohibits same-sex marriages being conducted on religious premises would be open to challenge on grounds of religious freedom by those religious bodies (such as the Quakers) who would wish to conduct them. (See further para.36 below)
30. Because there is only one legal concept of marriage, wherever it is conducted, once marriage is legal for same-sex couples, there will be a permanent risk that any exemptions provided for religious bodies may be withdrawn at any point in the future (if they have not already been overturned as unlawfully discriminatory by domestic or European Courts).

## **Equality**

31. 'Equality' should not be confused with 'sameness'. Various professions require strength or fitness tests for their members. The tests are not the same for men and for women, but they do provide a fair and equal test for both sexes, recognising their differences. That is equality in its true sense; a just provision for different groups which takes appropriate account of their differences. For same-sex couples, equality in that proper sense has already been fully provided by the Civil Partnerships Act.
32. A key part of the present government's argument for legislative change to the legal definition of marriage is on grounds of equality. The Catholic Church is opposed to all forms of unjust discrimination and affirms the importance of

treating everyone, whatever their sexual orientation, with equal dignity and respect.<sup>12</sup> There should not be unjust discrimination against homosexual people. But to restrict the institution of marriage to a voluntary union of one man and one woman does not constitute unjust discrimination since it is simply the consequence of the specific characteristic of the institution.<sup>13</sup>

### **Religious Freedom**

33. Recent case law has confirmed that there is no legal right to same-sex marriage under the European Convention on Human Rights, and that a state is free to make differing arrangements for marriage and alternative legal provisions for same-sex unions (*Gas & Dubois v. France* 15 March 2012<sup>14</sup>; *Schalk & Kopf v. Austria* 24 June 2010<sup>15</sup>). However, what has not been tested is whether a state could lawfully open the *same* institution of marriage to same-sex as well as to opposite-sex couples, while insisting that only opposite-sex couples could marry on religious premises. *Prima facie*, this would be a clear exercise of discrimination.
34. By creating new legislation the government would move the whole framework of marriage in such a way that issues which could not come before a court today could be contested at any point in the future. No assurances the government could offer about religious freedom for religious bodies would be able to negate the permanent risk they had created.
35. Most major religious groups in Britain have expressed strong opposition to same-sex marriage. This includes Christian churches, Jewish, Muslim, Sikh and Hindu representatives. Some smaller groups – such as the Quakers - are in favour of same-sex marriage.
36. The government's proposal in the consultation document to protect religious freedom has been to propose that it should be unlawful to conduct a same-sex marriage on religious premises. This, however, immediately creates another problem of religious freedom for those groups such as the Quakers who have made clear that they would wish to celebrate same-sex marriages on their religious premises. The Labour Party has already given its view that there should be permissive powers allowing religious groups that choose to do so, to

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<sup>12</sup> Catholic Herald Article by Archbishop Nichols 2.3.2012 "Don't underestimate the beauty of true friendship"

<sup>13</sup> Congregation for the Doctrine of the Faith (2003), Considerations regarding proposals to give legal recognition to unions between homosexual persons

<sup>14</sup> <http://www.coe.int/t/dghl/standardsetting/media/Article%208/Gas%20and%20Dubois%20v.France.pdf>

<sup>15</sup> <http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?sessionId=80038299&skin=hudoc-en&action=html&table=F69A27FD8FB86142BF01C1166DEA398649&key=6527&highlight=>



celebrate same-sex marriages on their premises. With the precedent of the Equality Act 2010 allowing civil partnerships to be conducted on religious premises where the religious group consents, it is likely that an amendment to this effect will be tabled.

### **Civil Understanding of consummation and adultery**

37. Men and women are different physically, mentally, and spiritually. They are, in all respects, complementary, both designed and suited for the task of begetting and raising children over a sustained period. Marriage is the legal recognition of this, and without the physical consummation of marriage, where that complementarity is most fully expressed, a marriage is voidable under English law.

38. The consultation document makes clear (para. 2.16) that the concepts of consummation and adultery would apply equally to same-sex marriage. But instead of considering how the law should define these issues for same-sex couples, it simply abandons the matter to future case law. But the common law method proceeds by dealing with the real and difficult cases before the court. The scope for expansion through precedent of what kinds of relationships are covered by marriage or civil partnerships is very real unless there is legislative clarity at the outset defining these issues.

### **Conclusion**

39. What is at stake in this proposal is the intrinsic meaning of marriage and what is best for society as a whole. Pope Benedict XVI has said:

“Defending the institution of marriage as a social reality is ultimately a question of justice, since it entails safeguarding the good of the entire human community and the rights of parents and children alike.”<sup>16</sup>

40. The government’s proposed safeguards for the institution of marriage as understood and conducted on religious premises are not proof against subsequent changes to legislation, and are at early risk of challenge in the European Court of Human Rights.

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<sup>16</sup> Address to a region of the USA Bishops’ Conference, March 2012

41. If implemented, the government's proposed legislative changes to the meaning of marriage will permanently diminish the significance of marriage for the whole of society. It will do so by abandoning the innately understood biological and sexual complementarity of the relationship between a man and a woman, and the children their union gives rise to, on which a strong and well-adjusted society is best built. As the Orthodox Christian Churches express it in their submission:<sup>17</sup>

“The proposed change is not, as is claimed, an extension of the high status and responsibilities of marriage to homosexual couples. Rather, it gives legal recognition to a radical change in the understanding of marriage itself that affects all married couples and hence society as a whole”.

42. In response to the government's primary consultation question therefore, the Catholic Bishops' Conference of England and Wales disagrees with the proposal to enable “all couples, regardless of their gender, to have a civil marriage ceremony” and, for all the reasons noted above, we urge the government not to proceed with its proposed legislative changes to marriage.

Archbishop Peter Smith  
Vice-President, Catholic Bishops' Conference of England and Wales  
Chairman, Department for Christian Responsibility and Citizenship.

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<sup>17</sup> Response to Government consultation by Gregorios, Archbishop of Thyateira & Great Britain