
Equal civil marriage: TUC advice
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The "Equal Marriage" Consultation

Equal marriage consultation: another step towards LGBT equality

Summary

The Government Equalities Office is consulting on the proposal to allow same sex partners who so wish to have the right to civil marriage. The consultation runs from 15 March to 14 June 2012. The TUC, advised by its Lesbian, Gay, Bisexual and Transgender (LGBT) Committee, welcomes the proposal as a further step towards achieving full equality for LGBT people, although not yet reaching that objective. This briefing covers three areas: (1) the background and context of the debate, leading to (2) advice on how to respond to the specific questions asked within the consultation; and (3) the suggestion that trade unionists should use the opportunity of public debate on this issue to further challenge popular prejudices and promote the social inclusion of LGBT people.

Marriage, civil partnership and LGBT equality

The new consultation

There are many different issues lying behind the public debate (as expressed in the media) that has developed since the prime minister announced at Conservative Party conference (in October 2011) that the government would legislate to extend the right to marry to same sex partners (confirming the earlier announcement by equalities minister Lynne Featherstone). Many of these issues are not actually covered by the consultation that was launched by the Government Equalities Office (GEO) in March 2012. The consultation runs until 14 June, after which the GEO will consider the responses, with a stated view of introducing legislation before the end of the current Parliament in 2015. The consultation document makes it clear that while seeking views on the level of support for the proposal, they have already decided to carry it through regardless.

- **The consultation documents and an accompanying fact sheet can be accessed at <http://www.homeoffice.gov.uk/equal-civil-marriage>**

The public reaction so far – and why it matters

The media discussion has been dominated so far by the outraged and plainly homophobic campaigns launched by the heads of the Church of England and the Catholic Church. The government has stated that it will pay no attention to these voices, and points out their incoherence and contradictions. Nonetheless, it is likely that where there is public discussion it will be framed by the question of whether or not LGBT people are entitled to be treated the same as the heterosexual majority, whether this step is a challenge to the “real” definition of marriage, and whether it undermines the traditional structure of the family and society.

In Parliament, both on the back benches of the Commons (where more than 100 Conservative MPs have signalled their opposition) and in the Lords, there will be powerful opposition to a bill to introduce this measure (on which there will be a free vote). Opponents will use these arguments that have been aired repeatedly on each occasion that the laws that previously discriminated on grounds of sexual orientation or gender identity have been reformed over the last fifteen years. They will also develop new lines of attack.

This has not prevented the continued progress in the legislative arena, although it has led successive governments to allow exemptions from the law on grounds of religion that the TUC has opposed. Nor has it prevented a gradual improvement in the process of eroding popular prejudices: in the last period, attitude surveys have shown a shift from majority hostility to majority acceptance.

On the street, therefore, it is quite likely that many people asked about the consultation will respond with “so what?”

Trade unions are aware that this will be far from being universal. There remains an unacceptable level of prejudice and ignorance, reflected for example in bullying in schools and colleges, abuse and invisibility in the national sport, and a very high level of hate crime. The language deployed by cardinals and archbishops risks making this worse, while the debate itself offers another opportunity for supporters of equality to challenge homo- and transphobia. In this area, it is also important to note that the views of the religious leaders are not necessarily shared by ordinary believers, who form part of the 65% majority (in a recent poll) who support the plan. The debate must avoid the danger of being seen as one of reactionary religions against progressive secularists, and the TUC supports the work of the Cutting Edge Consortium (www.cuttingedgeconsortium.co.uk) to promote the equality agenda within faith groups.

The government's two agendas – and ours

It has been clear that there are two lines of thinking behind the coalition government's plans to extend (civil) marriage to same sex couples, while continuing to allow same sex couples (only) to register civil partnerships. The Liberal Democrat Party has a long-standing commitment to equality for LGB people, including removal of the discrimination that currently forces trans people wanting a Gender Recognition Certificate to divorce existing spouses before doing so. The Conservative Party is committed to promote marriage as being "good for society", something reflected also in other government policies and proposals (for example, around tax).

The true position is that the government's proposal to extend the scope of civil marriage to same sex couples takes place at a time when the popularity of marriage among opposite sex couples is at an all-time low, according to Office for National Statistics (ONS) reports, a reality that the government is keen to reverse for other reasons.

Therefore, while supporting the "equal marriage" proposal, it is necessary to beware that there is a downside to at least one of the underlying agendas that are operating here. The risk is that in promoting the benefits of marriage, other types of relationships will be identified as less valuable in the government discourse.

It is these various and different agendas that create the context for debate around this consultation.

Trade unions have a different starting point, and the proposal recommended by the TUC and those unions that have so far adopted a policy on the topic is based on the simple principle of full equality. That objective is not in fact on offer in the government's plans, but every advance to date has been made as a partial step towards equality, and the TUC believes the same approach needs to be applied here.

Unions will most likely neither have, nor will wish to consider adopting, positions on the place of the institution of marriage in society. They will however wish to promote acceptance of equal rights and equal respect for all consensual relationships, and in the context of this consultation, promote the view that support for the proposal is because – and only because – it represents a further step towards equality, and an opportunity to push further back the boundaries of ignorance and prejudice.

The Consultation questions

The consultation document has been prepared to answer the concerns expressed by religious leaders and to confirm that nothing in the government plan impinges on the right of religious institutions to decide how they deal with marriage, or what they have to say about it. It confirms that the only marriage on offer to same sex partners will be civil, and the ban on there being any religious element to the ceremony - already in place for civil partnerships - remains.

The first inequality in the proposal, therefore, is that it applies only to civil marriage, excluding the possibility of those with religious beliefs seeking to have their marriage recognised through a service in a – willing - religious establishment.

The on-line questionnaire on the GEO website has only an “agree – disagree – don’t know” structure, except where space is specifically provided for writing comments. Respondents using the on-line version will therefore only be able to select among the boxes, except when invited to comment. Alternatively, there is limited space at the end of the questionnaire for additional comments. It is possible to return hard copy responses and the TUC recommends using this option where a union or individual wants to elaborate beyond what the on-line form allows.

- QUESTIONS 1-4

Q1 asks if you agree that all couples regardless of gender can have a civil marriage ceremony, and Q2 gives the chance to explain the reasons within 200 words.

The TUC recommends responding YES to the first question, then explaining why under Q2. Reasons for supporting this may include:

- The union supports full equality for LGB&T people, therefore this is a step in that direction. However, the proposal does not amount to the full equality that LGB&T people should be entitled to.
- There are different views among LGB&T people about marriage, civil partnerships or other relationships. The union believes all such choices are valid and deserve respect, and all such relationships should be equally available to all, regardless of gender or sexual orientation. Nonetheless, the existing ban on same sex couples getting married is seen by some as

symbolising a different or lower status, so it is progress to remove it, whether or not people opt to use the provision.

- It is important that the right of LGB&T people to equality is promoted against those who continue to hold ignorant or prejudiced beliefs.

Q3 and Q4 ask whether as an individual LGBT person or as a representative of a group of LGBT people, you would want to have a civil marriage ceremony. Unions may wish to encourage individual LGBT members to answer these questions when making their own responses.

- QUESTION 5

Q5 asks whether you agree that religious marriage should not be opened up to same sex couples.

The TUC suggests that if planning to respond to this question, tick the box “disagree”, and if wishing to provide more detail at the end, or in a hard copy response, to say that it is recognised that to reform religious marriage would be a much more complex and difficult undertaking; it is nevertheless the case that the current proposal does not represent full equality.

- QUESTIONS 6-8

Q6 asks whether you agree that civil partnerships (cp) should be kept once civil marriage is opened up. The government has already stated that it will maintain cp in its present form, anyway; Q8 asks if you agree that cp should not be opened up to opposite sex couples.

The TUC invites unions to agree to Q6 and disagree to Q8, and where it is possible to add comments, to state that although there may not appear to be great demand for it, genuine equality requires that both marriage and cp be available to all, regardless of gender or sexual orientation.

Q7 invites an individual who is LGB to indicate a preference between cp and marriage.

- QUESTIONS 9-11

Q9 asks individuals in a cp whether they would convert this to marriage. The consultation paper explains this would be done by applying to authority and paying a small fee, and having the choice of whether to have a new ceremony. It is not proposed that any time limit be imposed to exercise this choice, and stresses that rights and responsibilities attached to a cp would continue from the date of the original cp, not the date of conversion.

Q10 and 11 ask whether you agree to there being no time limit (agree), and whether there should be a choice as to whether to have a ceremony on conversion (agree).

The consultation paper at this point clarifies that existing rights to hold cp civil ceremonies on religious premises that agree to it will continue and will extend to those opting for same sex civil marriage.

- QUESTIONS 12-13

This section deals with the important issue of the requirement for trans people seeking a Gender Recognition Certificate (i.e. formal recognition in a new gender) to divorce an existing spouse first, something that the TUC has campaigned against in the past. The consultation paper states that this anomaly will be ended through the establishment of same sex marriage.

The questions ask individual trans people, and their spouses, how they would respond to this new situation.

- “Consequential issues” and Questions 14-16

This section sets out areas in which government will need to do further work as a consequence of the introduction of same sex civil marriage and, in Q14, allows 200 words in which to express views on the topics covered.

These are:

- There are different rules covering state pensions for men and for women. In a cp, partners are treated the same as married men. The DWP is now working on how to deal with same sex marriage.
- Discretionary survivor benefits in occupational pension schemes are only accrued back to the date of the CP Act (2005). The government is checking on retrospective rights. (This paragraph is potentially misleading – see note below).
- CP records are currently partly restricted (e.g. by removing the address), unlike marriage records. The issue is what should be done for same sex marriages.
- The important issues of recognition of marriage or cps overseas is unchanged, it depends on the domestic legislation in the country concerned. The government will be considering how to recognise overseas same sex relationships in the UK.
- The consultation covers England and Wales, as marriage is devolved in Scotland and Northern Ireland.
- There will be no change to tax and benefit rights, parenting rights, immigration rules, and the ability of religious organisations to preach their views on the definition of marriage.

As it is not known what precise proposals the government will make on any of these issues, unions may wish to make clear their views on any of the areas of particular concern to their LGBT members.

Note: public sector pension survivor benefits

A long-standing unresolved issue is the unequal back-dating of public sector survivor pension benefits and unions may wish to emphasise the importance of using this legislative opportunity to remedy this old injustice. The consultation document is incomplete: it omits the fact that public sector pension schemes allow back-dating for same cps to 1988, which is less than for married scheme members. Most private sector schemes have had a more flexible approach.

Q15 asks about amendments to the Impact Assessment, Q16 invites up to 200

words to make any further comments.

Promoting acceptance, challenging intolerance

As already indicated, the level of continuing popular prejudice is alarming, and debate around the establishment of same sex civil marriage rights creates an opening and an opportunity to further promote acceptance of the idea that lesbian, gay, bisexual and transgender people should be respected as equal citizens. Union members have an important potential role to play in this process.

As well as discussing with their LGBT members, unions might wish to consider what opportunities there are to take this message out more widely to non-LGBT members. Whether discussions take place within workplace environments, or within communities or are organised by local LGBT organisations, there are opportunities for trade unionists to present the trade union movement's commitment to the equality agenda, at the same time illustrating the diversity and the progressive policies of modern trade unionism, and making unions more attractive both to potential LGBT members, and to non-LGBT people many of whom welcome such a commitment.

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