HOUSE OF LORDS

Library Note

Marriage (Same Sex Couples) Bill (HL Bill 29 of 2013–14)

This Library Note provides information on the Marriage (Same Sex Couples) Bill, which is due for second reading in the House of Lords on 3 June 2013. The Bill would extend civil marriage to include same-sex couples and allow those religious organisations who wished to do so to conduct same-sex marriage ceremonies. The Note is intended to be read in conjunction with two House of Commons Library Research Papers, *Marriage (Same Sex Couples) Bill* (1 February 2013, RP13/8) and *Marriage (Same Sex Couples) Bill Committee Stage Report* (19 March 2013, RP13/22), which provide background information and summarise the second reading debate and committee stage in the House of Commons. This Note summarises the report stage and third reading debate in the House of Commons.

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1. Introduction

The Marriage (Same Sex Couples) Bill was introduced in the House of Commons in January 2013, and was carried over to the 2013–14 session following a motion agreed in the Commons. The Bill would extend civil marriage to include same-sex couples and allow those religious organisations who wished to do so to conduct same-sex marriage ceremonies. The Bill includes protections intended to prevent churches from being forced to hold same-sex marriages. The Bill also includes measures to allow civil partners to convert their partnership to a marriage and enable married transsexual people to gain legal recognition in their acquired gender without having to end their marriage. The Bill provides for same-sex marriage to be lawful in England and Wales only, with certain provisions extending to Northern Ireland and Scotland (*Marriage (Same Sex Couples) Bill—Explanatory Notes*, 21 May 2013, pp 5–7).

The Bill has been described by the Government Minister steering it through the House of Commons, Maria Miller, as one which has provoked strong opinions on all sides, both in parliament and in the country at large (HC *Hansard*, 21 May 2013, col 1152). The House of Commons divided on whether the Bill should receive a second reading, with the Bill being supported by 400 votes to 175. This was a free vote, and voting behaviour did not follow party lines (BBC News website, 'Gay Marriage: I'm Proud Same-Sex Love to be Equal—PM', 6 February 2013).

Issues considered by the Public Bill Committee included the extension of civil partnerships to mixed-sex couples, conscientious objections to conducting same-sex marriages, the views of the Church of England and other religious organisations, the offering of marriage counselling and related services, and the status of civil partnerships solemnised under the law of England and Wales in Northern Ireland.

The House of Commons Library papers *Marriage (Same Sex Couples) Bill* (1 February 2013, RP13/8) and *Marriage (Same Sex Couples) Bill Committee Stage Report* (19 March 2013, RP13/22) provide background information and summarise the second reading debate and committee stage in the House of Commons. The House of Commons Library has also published a Note entitled *Pensions: Civil Partnerships and Same-Sex Marriages* (28 May 2013, SN03035), which provides a summary of the debate during the passage of the Bill concerning the pension rights of civil partners and those entering same-sex marriages, and a Note entitled *Humanist Marriage Ceremonies* (14 May 2013, SN05864), which includes a summary of the debate at committee stage of the Bill on allowing humanist marriage ceremonies in England and Wales.

This Note summarises proceedings in the Commons at report stage and third reading.

2. Commons Report Stage

2.1 Conscientious Objection and Freedom of Speech

On the first day of report stage in the Commons, MPs debated a group of amendments to the Bill concerning the duties of teachers and registrars following the introduction of same-sex marriages, and the protections offered by the Equality Act 2010 to those who did not believe in same-sex marriage. These amendments included:

- New clause 1 would have amended the Education Act 1996, to prevent schools from being under a duty to promote an understanding of the nature of marriage, set out in guidance from the Department for Education, which might run counter to the religious character of the school.

- New clauses 2 and 3 would have removed from registrars the duty to conduct a marriage ceremony for a same-sex couple if the registrar had a conscientious objection to same-sex marriage.

- New clause 4 would have amended the Equality Act 2010 to state that discussion and criticism of same-sex marriage would not be taken as discrimination.

- New clause 5 would have amended the Equality Act 2010 so that those who believed in a definition of marriage as being between a man and a woman would be protected by the public sector equality duty.

- New clause 6 would have amended the Equality Act 2010 to include the belief in marriage as being between a man and a woman in the protections provided to religious belief.

- Amendment 50 to change provisions in the Public Order Act 1986 concerning protections of freedom of expression regarding sexual orientation was also debated. This followed concerns from some MPs that the Act might be used to prosecute those who voiced their opposition to same-sex marriage. Minister for Sport and Tourism at the Department for Culture, Media and Sport (DCMS), Hugh Robertson, stated that the Government would table an amendment in the House of Lords to meet the concerns of Members (HC *Hansard*, 20 May 2013, col 963).

Impact on Teachers and Schools

Conservative MP David Burrowes moved new clause 1. He argued that the Bill would create a duty for teachers to promote same-sex marriage, which would have implications for the freedom of speech for those who did not believe in same-sex marriage. This was an issue he had raised during committee stage:

> The law requires that schools and teachers must not only relay the legal facts on marriage but promote legal understanding of it. John Bowers QC, one of the leading counsels who has given his opinion, has said that the Bill would create a duty to promote and endorse the new definition of marriage.
>
> (HC *Hansard*, 20 May 2013, col 928)

Mr Burrowes stated that 40,000 teachers were not happy to promote or endorse same-sex marriage and would risk their employment if they were required to do so, referring to the findings of a poll carried out by ComRes on behalf of the campaign group Coalition for Marriage.

Conservative MP Sir Gerald Howarth argued that the Bill would not provide adequate protection for Church of England schools, suggesting that the Church had reservations concerning the guidance from the Department for Education on how to incorporate a school's religious identity into their sex and relationship education policy. Sir Gerald quoted a briefing published by the Church of England Parliamentary Unit which stated that, although section 1.7 of the guidance established that schools of a particular religious ethos were able to reflect that ethos in their sex and relationship education policy, there was nothing to prevent future Secretaries of State withdrawing section 1.7 from the guidance (Marriage (Same Sex Couples) Bill: Commons Report and Third Reading Briefing, 16 May 2013, republished on the website thinkinganglicans.org.uk) (HC *Hansard*, 20 May 2013, col 944).

Sir Gerald also argued that without primary legislation, the guidance could be changed following a decision by the European Court of Human Rights (ibid). Democratic Unionist Party (DUP) MPs, Jim Shannon and Dr William McCrea, also argued that only legislation would provide adequate protection for schools (ibid, cols 954–6).

Labour MP Jonathan Reynolds argued against new clause 1 on the grounds that it was unnecessary to legislate in this type of circumstance and that the issuing of guidance was sufficient:

> It is already clear that someone can express a view (regarding same-sex marriage)—a personal opinion—to which no one would have any objection, but if they did so in a way that bullied or stigmatised, or in any way went beyond what is reasonably acceptable, they would be going too far. This is no different from many of the issues that teachers deal with every single day. On all those issues, yes, we issue guidance, but we never do anything as prescriptive as putting into primary legislation certain rights and responsibilities that would be unacceptable in any other field.
>
> (ibid, col 955)

Labour MP Ben Bradshaw, during an intervention, quoted an article by the Education Secretary, Michael Gove, published in the *Mail on Sunday* ('Gove Declares that Teachers Won't be Fired for Opposing Gay Marriage', 2 February 2013) in which the Secretary of State wrote that no change to the Bill was necessary as he had confidence in the protections to freedom of conscience and speech already offered to teachers under UK law (HC *Hansard*, 20 May 2013, col 933).

Conservative MP Nick Herbert argued that there was a case for the Government helping to explain the proper balance:

> Most of us agree that there should be limits on that freedom, and that were teachers to overstep the mark and start discussing the issue in a way that was hateful or unpleasant and that was deeply upsetting to children, something should prevent that. The question is whether that is the proper realm of the criminal law or whether it amounts to good teaching, good practice in schools and the sensible intervention of head teachers. Further clarity from the Government about what is and is not to be permitted in schools would be welcome.
>
> (ibid, col 949)

This request for clarity from the Government had also been made by the Labour MPs Helen Jones and Catherine McKinnell and the Liberal Democrat Deputy Leader, Simon Hughes (ibid, cols 947 and 953).

The protection of the rights of gay or lesbian children and the children of same-sex couples was also raised during the debate. Labour MP and member of the Public Bill Committee, Stephen Doughty, defended what he argued was a 'permissive and protecting Bill' (ibid, col 932), saying that the evidence given to the committee from both sides of the debate had, for him, reinforced this view. Mr Doughty, following an intervention from Labour MP Fiona O'Donnell, supported the argument that, when debating these amendments, consideration should be given to the children of same-sex couples. He also cited the evidence given at committee stage from school representatives on issues of homophobic bullying and the position of LGBT staff (ibid, cols 933–4).

For the Opposition, Shadow Home Affairs Minister, Chris Bryant, argued that Members supporting new clause 1 had not appreciated that it was the job of teachers to draw a distinction between

teaching pupils the facts and indoctrinating them into a belief. He also argued that the provisions of the Education Act 1996 already embodied the protection that new clause 1 sought to achieve, but that new clause 1 would go further and render the guidance on sex and relationship policy from the Education Secretary irrelevant (ibid, col 961).

The Minister, Hugh Robertson, argued that it had been established at committee stage that no school or teacher would be under a duty to promote or endorse a particular understanding of marriage as a result of the Bill or any revised future guidance. He stated that this would be because the guidance was that teachers should ensure pupils learn the nature of marriage and its importance, not promote or endorse a particular view of marriage. The guidance also stated that teaching should be balanced and sensitive to pupils' backgrounds, which for many schools would therefore necessarily reflect the school's religious ethos in their sex and relationships policy. Mr Robertson cited evidence to the committee from Lord Pannick, which stated that a teacher would not be lawfully disciplined for explaining their own religious beliefs concerning marriage to a child of an appropriate age (Marriage (Same Sex Marriage) Public Bill Committee, *Official Report*, 12 February 2013, cols 47–54 and Memorandum (MB 01), February 2013). However, Mr Robertson committed to the House that the Government would discuss again this issue with religious groups and would 'consider all available means—including an amendment if necessary—to put the issue beyond any doubt in the other place' (ibid, col 963).

This commitment was welcomed by David Burrowes, who did not put new clause 1 to a vote (ibid, col 956).

Conscientious Objection by Registrars

David Burrowes argued that new clauses 2 and 3 were necessary because no registrars should be compelled to act against their consciences or be sacked because of their views on marriage. He cited the provisions of the Abortion Act 1967, which allowed individuals with a conscientious objection to abstain from participating in abortions, and similar provisions in the Human Fertilisation and Embryology Act 1990, as precedents for what was proposed in these new clauses. Mr Burrowes argued that it was disgraceful that, as he asserted had been proposed at committee, registrars were in effect being given notice to quit:

> During the Bill Committee, one hon Member suggested that people should realise that the writing is on the wall for their employment and that they should jolly well recognise that they will have to stick to the law and not exercise their own conscience, or get out now while they have the chance... It means that this will be not just a marriage Bill, but an unfair dismissal Bill.
>
> (ibid, cols 928–9)

Both Mr Burrowes and Jim Shannon stated that, in the Netherlands, the protection of the religious views of registrars on same-sex marriage was enshrined in law (ibid, cols 929 and 954).

Liberal Democrat MP Stephen Williams disputed the case for new clauses 2 and 3, identifying himself as the Member Mr Burrowes had referred to in col 929:

> The difference between a registrar and an abortion surgeon is that a registrar's sole duty is to conduct marriage. If they are unhappy about the central purpose of their job, then of course they should reconsider what they are doing.
>
> (ibid, col 934)

Nick Herbert also argued against new clauses 2 and 3 on the grounds that registrars were public employees whose role was the application of the law of the land, and that the law had to be applied in an even-handed way (ibid, cols 949–50). In an intervention to Mr Herbert's speech, Mr Burrowes countered that the new clauses would not lead to a denial of service, as other registrars would be available. Chris Bryant stated that in many local authorities, because of the lack of registrars, couples would not have the option of going to another registrar (ibid, col 950). Mr Bryant went on to make a similar point to that made by Mr Herbert, that registrars had a duty to apply the law regardless of a couple's sexuality or any other factor (ibid, cols 961–2).

Simon Hughes, who supported new clause 3 but not new clause 2, asked the Government to consider the issue of registrars again on the grounds that the Bill did not have the right balance:

> There is a difference between saying to somebody, if this Bill is passed, 'The law of the land says there are same-sex marriages and you can't expect to be a public official and not carry them out', and expecting somebody who is currently a registrar, having taken the job not knowing that there would ever be same-sex marriages, to perform them.
>
> (ibid, col 954)

Hugh Robertson stated that the Government would maintain its opposition to conscientious objection provisions for registrars:

> Like it or not, they [registrars] are public servants who should carry out the will of parliament, and allowing exemptions according to conscience in my view sets a difficult precedent. Furthermore and crucially—this is important—the consultation with the national panel for registrars revealed absolutely no concerns whatsoever about conscience, and it would be unusual for the House to pass a new clause if the national representative body did not ask for such an exemption.
>
> (ibid, cols 963–4)

Mr Burrowes expressed his wish to press new clause 3 to a vote (ibid, col 965). The clause was defeated, with 340 votes against the new clause and 150 votes in favour.

Protection of Freedom of Speech and the Equality Act 2010

Mr Burrowes argued that new clauses 4, 5 and 6 and amendment 50 sought to protect freedom of speech for those who did not agree with 'the way in which the State wants to redefine marriage'. He cited the evidence from the lawyer Mark Jones to the Public Bill Committee, who had stated that the Bill would have an impact on freedom of speech (Marriage (Same Sex Marriage) Public Bill Committee, *Official Report*, 14 February 2013, cols 159–68). Mr Burrowes also gave the example of a case in Cambridge where members of the public called for the arrest of a street preacher who had argued against same-sex marriage. Mr Burrowes stated that, although the street preacher had not been arrested, this was evidence of a 'chilling effect' on freedom of speech where a particular viewpoint is judged to be at odds with the views of other people's concerning equality (ibid, cols 930–1).

Conservative MP Edward Leigh argued that new clause 6 was necessary to offer the protection of equality legislation to those who disagreed with same-sex marriage. He cited the case of Adrian Smith, an employee at Trafford Housing Trust, who won a case against his employer following his demotion after posting on Facebook that he believed that same-sex marriage was an 'equality too

far'. Mr Leigh stated that equality legislation had been no help to Mr Smith in his case, winning instead on contract law, and that Mr Smith had only won a small amount in damages (ibid, col 939).

Both Mr Leigh and Sir Gerald Howarth referred to a 'chilling effect' on free speech, of which the examples of Adrian Smith and the Cambridge street preacher were symptomatic (ibid, cols 931 and 942). Sir Gerald argued that legislators were ignoring a belief held in the country at large that people were being prevented from expressing strongly-held personal beliefs:

> Opposition Members speak effortlessly of their belief in freedom of expression, but I am afraid that the reality out there is very different. Our constituents do feel intimidated. They fear that they will be accused of a hate crime. That, in my view, is a new and wholly pernicious development of the law.
>
> (ibid, col 943)

Conservative MP Margot James intervened on this point, stating:

> The notion of a 'chilling effect' is new to me, but I recall in the 1980s, and even the 1990s, what I would describe as a freezing effect on the lives of gay people and other minorities.
>
> (ibid)

She argued instead that the effect of recent equality legislation had been to level the playing field. Sir Gerald responded by stating that he believed instead that 'the pendulum is now swinging too far in the opposite direction' (ibid).

Chris Bryant opposed new clauses 4, 5 and 6, stating that the supporters of these amendments would drive a 'coach and horses' through the Equality Act 2010 in seeking to secure protection for specific beliefs:

> I say to the hon Member for Enfield, Southgate (Mr Burrowes) that there is a fundamental misconception about how the Act works. It does not protect the individual belief within religion; it protects the religion. It is not transubstantiation that is protected, but Catholicism. It is not a belief in the afterlife that is protected, but Christianity. It would be invidious to introduce any special provision that breached that.
>
> (ibid, col 962)

Hugh Robertson stated that he wished to place on the record that, under the Equality Act 2010, it was unlawful to discriminate against someone because they held a belief that marriage should only be between a man and a woman, whether for religious or philosophical reasons. The Government's position was that further protections were unnecessary. He also referred to the case of Adrian Smith, stating that he would have received a larger reward had he not failed to bring the case within the timeframe laid out by the employment tribunal (ibid, col 964).

The House divided on new clause 6, and the clause was rejected, with 148 votes in favour of the new clause and 339 votes against.

2.2 Civil Partnerships for Mixed-Sex Couples

The first day of report stage in the Commons also saw discussion of new clause 10, tabled by the Conservative MP Tim Loughton. New clause 10 would have amended the Civil Partnership Act 2004 to enable mixed-sex couples to enter into civil partnerships. Mr Loughton described this new clause as addressing an unfair situation arising from the Bill:

> If the Bill goes through, as I expect, same-sex couples will be entitled to continue in a civil partnership, to take up a civil partnership or to take up the new form of marriage. Opposite-sex couples will have only the option of traditional marriage, albeit by a larger range of religious institutions.
>
> (ibid, col 990)

Mr Loughton also argued that the extension of civil partnerships would help to aid family stability, offering couples who do not wish to marry an alternative form of partnership:

> We know that marriage works, but we also know that civil partnerships are beginning to show empirical evidence of greater stability for same-sex couples, including those who have children, be it through adoption, surrogacy or whatever. There is a strong case for believing that extending civil partnerships would improve that stability for many more families in different forms... If just one in ten cohabiting opposite-sex couples were to enter a civil partnership, that would be some 300,000 or so couples and their children, giving them greater security, greater stability, less likelihood of family breakdown, better social outcome and better financial outcome.
>
> (ibid, col 992)

New clause 16 was debated alongside new clause 10, tabled by the Government to hold a review into whether to extend civil partnerships to mixed-sex couples. A manuscript amendment to this Government amendment was also discussed, new clause 16: (a). The manuscript amendment was tabled by the Opposition front bench with the stated purpose of preventing a possible five year delay before completion of the review and that it should include a full public consultation. This manuscript amendment was accepted and supported by the Minister for Women and Equalities, Maria Miller (ibid, col 1011). Both Mr Loughton and Green Party MP, Caroline Lucas, argued that these amendments constituted party political game playing by the Government and Opposition front benches, which would jeopardise resolving an inequality and obscure the principles at stake (ibid, cols 997 and 1001).

Ms Miller argued that new clause 10 would risk a delay in achieving the primary goal of the legislation, the opening up of marriage to a group who had not had access to it before. She cited the length of the Civil Partnership Act 2004, containing more than 250 sections and 30 schedules, and the fact that it took more than two years to pass into law, as evidence of this risk (ibid, col 979). Mr Loughton argued that there was a danger that, if the Commons agreed to a consultation on the Civil Partnership Act, this would result in the issue of mixed-sex civil partnerships being 'kicked into the long grass'. Mr Loughton offered to withdraw his amendment if the Government stated that they thought a review could be done during the progress of the Bill (ibid, cols 997 and 995).

Ms Miller stated, in her closing speech, that the consultation would take place while the Bill was in the House of Lords, and it would 'provide a prompt response in terms of a consultation'. However, she stated that it would not be feasible to conduct a consultation in the two weeks before the Bill

started in the Lords. She offered to undertake further discussion of the timetable for the review with Mr Loughton (ibid, cols 1011–12).

The possible cost implication of an extension of civil partnerships was also raised. Maria Miller cited evidence given by Work and Pensions Minister, Steve Webb, to the Joint Committee on Human Rights, in which he estimated that the potential pensions liability resulting from new clause 10 could be some £4 billion (Joint Committee on Human Rights, *Uncorrected Transcript of Oral Evidence*, 14 May 2013, Q 44). Mr Loughton, in an intervention, put to the Secretary of State that this figure was not the result of an official cost impact assessment, but was an 'entirely hypothetical figure based on every cohabiting opposite-sex couple choosing to convert to a new civil partnership, with maximum pension liabilities'. Ms Miller responded by saying that the fact that there was no official assessment was proof that this issue had not been looked at in sufficient detail for it to be appropriate for parliament to legislate on it (ibid, cols 979–80).

A similar argument to that made by Ms Miller was made by Nick Herbert, who stated that, because the work had not been done on the implications of extending civil partnerships, agreeing new clause 10 could jeopardise the Bill. Although he explicitly excluded Mr Loughton from his comments, he asserted that there were those for whom this amendment offered a means of wrecking the Bill, adopting a 'faux attachment to equality' while having opposed civil partnerships when they were originally debated (ibid, cols 1009–10). The Shadow Equalities Minister similarly argued that new clause 10 was, if not a wrecking amendment, 'at best premature and should not be supported' (ibid, col 988).

Caroline Lucas expressed her support for an extension of civil partnerships to mixed-sex couples, saying she supported the new clause in good faith and had been a long-term campaigner on this issue. She criticised 'heavy briefing claiming that to support the new clauses would be tantamount to enabling the Bill to be scuppered' and argued that, although her 'bottom line' was that the Bill should not be jeopardised:

> There is no procedural reason why the new clauses on civil partnerships need wreck the chances of introducing legal same-sex marriage... This is about equality. Are we really saying that people are equal only if it does not cost us too much and if it is not too complicated? We need to meet those cost arguments.
>
> (ibid, cols 1001–3)

The issue of unfairness, that civil partnerships would not be available to mixed-sex couples, was addressed by Labour MP Tom Harris, who voted for the original Civil Partnership Bill in the 2003–04 session. Mr Harris argued that civil partnerships would be undesirable because they were inferior to marriage:

> When we legislated in this House 10 years ago, we stopped short of legalising same-sex marriage for the simple reason that it was considered a step too far... We deliberately and intentionally created something that was not as good as marriage, because politically we did not feel we could get it at that time.
>
> (ibid, col 1004)

He also argued that the extension of civil partnerships to mixed-sex couples would constitute a threat to marriage (ibid, col 1005).

Mr Loughton stated that he intended to put new clause 10 to a division. The Government indicated that the division was a free vote and the new clause was rejected, with 70 votes in favour of the new clause and 375 votes against. New clause 16 to hold the consultation was agreed following a division. The manuscript amendment, new clause 16: (a), was agreed without a division.

2.3 Humanist Marriage Ceremonies

On the second day of the Bill's report stage in the Commons, the Shadow Equalities Minister, Kate Green, moved new clause 15 which would have amended the Marriage Act 1949 to allow for the introduction of humanist marriage ceremonies, an amendment drafted with the support of the British Humanist Association. Background information and a summary of the debate concerning humanist marriage ceremonies at committee stage of the Bill is included in the House of Commons Library Standard Note *Humanist Marriage Ceremonies* (14 May 2013, SN05864).

Ms Green argued that, although the Marriage Act 1855 and the Places of Worship Act 1753 had established in English law the importance of premises in the legal recognition of marriages, there existed longstanding exceptions for Quakers and Jews. New clause 15 sought to create a similar exception specifically for humanist congregations. On this basis, she argued that the new clause was not a departure from fundamental English marriage law (HC *Hansard*, 21 May 2013, cols 1074–5).

The Attorney-General, Dominic Grieve, stated his opinion that the creation of an exception for humanist ceremonies, as it had been drafted in new clause 15, risked being subject to claims from other secular groups that it contravened their Article 14 rights against discrimination, and that the Secretary of State might not be able to sign off the Bill under the Human Rights Act 1998 before it could proceed to the House of Lords. Ms Green argued that new clause 15 had been drafted narrowly on the advice from the Government's own officials, and was surprised and disappointed that human rights objections had been raised at this stage without the benefit of 'a fully worked and argued opinion' from the Attorney-General (ibid, cols 1076–7). The timing of the advice from the Attorney-General was also criticised by Liberal Democrat MP Stephen Williams, who argued that the Attorney-General's intervention had been made at 'the eleventh hour and 59 minutes' (ibid, col 1114).

Another objection to new clause 15 was raised by the Second Church Estates Commissioner, Sir Tony Baldry, who argued that the Church of England and other faith groups had not greeted the proposal 'with unalloyed joy' and that there had not been proper consultation involving these groups (ibid, col 1083). Ms Green had stated that 'it is not easy for the official Opposition to carry out extensive consultations, but the issue was raised in Committee' (ibid, col 1080). Sir Tony also stated, because new clause 15 could not be applied to humanists only, it would constitute a departure from the system in England and Wales, which is premises based, toward a celebrant based system, such as that which exists in Scotland:

> Let us consider the Scottish example. In Scotland we have seen pagan weddings celebrated, spiritualist weddings celebrated, and weddings celebrated by the White Eagle Lodge. That is a question on which our constituents should properly be consulted.
>
> (ibid, col 1085)

The Culture Secretary, Maria Miller, said that it would not be legally possible to restrict the approach proposed in new clause 15 to humanists exclusively, but that this was a complicated issue that could be considered in the House of Lords, and that further information could provided if required. Ms Miller stated that she was happy to write to Ms Green setting out the legal objections, an offer

welcomed by the Shadow Equalities Minister (ibid, cols 1117–18 and 1122). New clause 15 was withdrawn.

2.4 Other Amendments

Civil Unions

The Liberal Democrat MP Greg Mulholland tabled new clause 14 to the Bill, which would have replaced marriage and civil partnerships as they were currently defined in law with a new civil union, with the repeal of both the Marriage Act 1949 and the Civil Partnership Act 2004. This new clause was linked to new clause 13, which was debated on the first day of report stage (HC *Hansard*, 20 May 2013, cols 1000–01). Mr Mulholland described the purpose of civil union as a more liberal and fair means of ensuring the equal recognition of adult relationships by the State (HC *Hansard*, 21 May 2013, cols 1091–4). New clause 14 was opposed by the Government and the proposals for civil unions were withdrawn (ibid, col 1119).

Transgender Couples

Liberal Democrat MP Dr Julian Huppert moved a group of amendments to the Bill further to issues which applied to people who change their gender. These included amendment 15, which would have changed the law so that, where a marriage had been converted to a civil partnership to ensure the full legal recognition of the transition of a partner, and the couple wished to then enter a same-sex marriage, the marriage could be counted as having been in place retrospectively throughout the period of civil partnership. Dr Huppert argued that this amendment would enable MPs to make amends for those couples whose marriage had been 'stolen from them', because the definition of marriages and civil partnerships as being between mixed-sex and same-sex couples had required them to end their marriage before they could transition under law (ibid, col 1125).

Ms Lucas supported these amendments, describing them as providing 'some small right to the dreadful wrong that has been done'. She also spoke to amendments 18 and 22, tabled by the Labour MP Hugh Bayley, which included measures to offer compensation to couples who had had to end their marriages for the purpose of achieving legal recognition of transition (ibid, col 1129).

Parliamentary Under-Secretary of State for Justice, Helen Grant, stated that the Government would not support a compensation payment. Ms Grant also argued that the Government would not support amendment 15:

> ... the Government have great sympathy for couples who felt required to make the difficult choice to end their marriage to enable one party to obtain gender recognition. However, it is not possible to reinstate a marriage that has been lawfully ended by an order of the court.
>
> (ibid, col 1145)

The amendments were withdrawn.

Survivor Benefits Paid to Spouses in Civil Partnerships

Alongside amendments concerning transgender couples, MPs debated amendments concerning pension rights of civil partners and those entering a same-sex marriage. These included amendment

49, tabled by Caroline Lucas, which would have omitted from the Bill changes to the Equality Act 2010 concerning the award of survivor benefits paid to the spouses in civil partnerships:

> Paragraph 18 of schedule 9 to the Equality Act 2010 allows employers and pension providers to ignore the service and contributions of gay employees made before 5 December 2005 when it comes to assessing survivor benefits for their civil partners and occupational pension schemes. Paragraph 15 of schedule 4 to the Bill would extend that discriminatory provision to same-sex spouses.
>
> (ibid, col 1132)

Amendment 49 would have changed the Bill so that, instead of amending paragraph 18 of schedule 9 of the Equality Act 2010, it would repeal them from the Equality Act. Conservative MP Mike Freer, who co-signed amendment 49, argued that the cost of changing the law would not be prohibitive:

> Everything we as a Government do has a cost, so I thought there must be some huge cost—perhaps £4 billion, which was a ready price-tag yesterday. In fact, the cost of giving equal pension rights on contracted-in pensions to civil partners is £18 million—not £80 million or £80 billion, but £18 million. It is true that that is a lot of money, and I certainly would not mind having £18 million in my bank account, but let me put that into perspective. The assets under management of the pension industry amount to £360 billion, so the cost of removing this anomaly is 0.006 percent of assets under management. I do not think that is a price we cannot afford.
>
> (ibid, col 1138)

Helen Grant stated that the Government did not believe 'that it would be right to put on schemes the significant additional and retrospective financial burdens that would arise from removing the Equality Act exception' (ibid, col 1144). Amendment 49 was not made to the Bill.

Further information on amendment 49, and other amendments concerning the pension rights of civil partners and spouses in same-sex marriages, is included in the House of Commons Library Standard Note *Pensions: Civil Partnerships and Same-Sex Marriages* (28 May 2013, SN03035).

Northern Ireland

The Government moved amendments 27 and 28, which required the Secretary of State to obtain the consent of Northern Ireland's Department of Finance and Personnel in the context of orders and regulations which fell within the legislative competence of the Northern Ireland Assembly. Jim Shannon (DUP) welcomed the amendments:

> The amendments have clearly given the Assembly the authority to make a final decision on the issue. That is very significant, and I thank both Ministers for what they have done.
>
> (ibid, col 1137)

3. Commons Third Reading

Speaking for the Government at third reading, the Minister for Women and Equalities, Maria Miller, said that the Government had been committed throughout the passage of the Bill to the principle 'that people should not be excluded from marriage simply because of who they love'. She stated that

MPs on all sides could agree that marriage was underpinned by the values of 'love, commitment and stability', which were the values on which society was built. Ms Miller argued that the values of marriage should be available to all. She also asserted that the Bill would not undermine those who believed that marriage should be between a man and a woman, and stated that the Government had committed to do all that it could to clarify or strengthen the protections on freedom of expression (HC *Hansard*, 21 May 2013, col 1153).

The Shadow Home Secretary, Yvette Cooper, expressed her pride that the Bill had reached third reading in the Commons. Although she was broadly supportive of the Government's approach, she said that she hoped that there would be further discussion in the House of Lords of humanist marriage ceremonies. She also hoped for early progress on mixed-sex civil partnerships. However, she said that the Opposition had approached issues over which they disagreed with the Government in such a way as to prevent anything which would have delayed or obstructed the passage of the Bill (ibid, col 1155).

Nick Herbert argued that the most serious concern that had been advanced about the Bill related to ensuring that religious freedom was protected. The Church of England had stated its confidence in the locks that had been put into the Bill to prevent a Church from being forced to conduct a same-sex marriage against its will. He went on to argue:

> Religious freedom cuts both ways, and those who have rightly spoken on behalf of religious freedom cannot ignore the cause of religious freedom for Churches that do wish to conduct same-sex marriages. What about the Quakers, the Unitarians or the liberal Jews; what about their religious freedom?
>
> (ibid, col 1158)

Mr Herbert also argued that 'all the independently conducted opinion polls—not those conducted by the pressure groups opposed to the Bill—[indicated] that a majority of the public support this legislation' (ibid, col 1159).

DUP MP Jeffrey Donaldson stated his party's opposition to the Bill in principle and argued that marriage was between one man and one woman and should not be redefined. He said that opposition to the principle of the Bill by him and others was based on their Christian faith. Taking up previous comments from the Shadow Home Secretary that the Bill was a development in the history of marriage, Mr Donaldson suggested that, if parliament was to advocate equality in marriage, it might in time need to consider the view of those who believed in polygamy. He argued that the Bill would undermine one of 'the fundamental building blocks of society' (ibid, cols 1159–60).

David Burrowes expressed his surprise that the Bill had been put forward under a Government which included the Conservative Party:

> There was no clear manifesto commitment, no coalition agreement on it and no Green Paper—there was just a sham consultation—and there are no significant amendments to the Bill beyond the civil partnerships review. We have had programme motions that have denied all MPs the opportunity to scrutinise the Bill in detail. Consciences have been constrained.
>
> (ibid, cols 1161–3)

Mr Burrowes criticised the Bill for having caused division, both in the Conservative Party and in the country, rather than achieving inclusivity (ibid, cols 1161–3).

Conservative MP Peter Bone stated that he would oppose the Bill on the grounds that he believed marriage was between a man and a woman, and on the grounds that there had been a lack of proper scrutiny of the Bill:

> We are yet again dealing with an amazing piece of important legislation that owing to the programme motion is going through without proper scrutiny in the House. Yesterday, whole parts of the Bill could not be amended because consideration of the amendments were not reached.
>
> (ibid, col 1166)

This was an argument Mr Bone had made previously to oppose the programme motion for report stage (HC *Hansard*, 20 May 2013, col 922).

Dr Julian Huppert said that Liberal Democrat MPs believed 'that the State should not bar a couple who love each other from marrying just because of their gender or sexuality', stating that his party had passed an equal marriage motion three years previously. He also repeated the argument that parliament should legislate for humanist weddings (HC *Hansard*, 21 May 2013, col 1168).

The House divided on the motion that the Bill be read a third time. The motion was agreed with 366 votes in favour and 161 votes against.