



# ***Marriage (Same Sex Couples) Bill***

## **Committee stage report**

**Bill No 126 of 2012-13**

**RESEARCH PAPER 13/22** 14 March 2013

This is a report on the House of Commons Committee Stage of the *Marriage (Same Sex Couples) Bill*. It complements Research Paper 13/08 prepared for the Commons Second Reading.

The Bill would introduce civil marriage for same sex couples, and enable religious organisations to opt in to conduct same sex marriages if they wish to do so. It includes provisions intended to protect religious organisations and individuals from being forced to conduct same sex marriages. The Bill would also enable civil partners to convert their civil partnership to a marriage and would enable married transsexual people to gain legal recognition in their acquired gender without having to end their marriage.

The Bill was not amended in Public Bill Committee.

Catherine Fairbairn  
Doug Pyper  
Nerys Roberts  
Djuna Thurley

## Recent Research Papers

13/10	The Local Government Finance Settlement 2013/14 and 2014/15	08.02.13
13/11	Children and Families Bill [Bill 131 of 2012-13]	15.02.13
13/12	Unemployment by Constituency, February 2013	20.02.13
13/13	Justice and Security Bill [HL]: Committee Stage Report	25.02.13
13/14	The History of the Parliamentary Franchise	01.03.13
13/15	Financial Services (Banking Reform) Bill [Bill 130 of 2012-13]	28.02.13
13/16	Social Indicators	01.03.13
13/17	Economic Indicators, March 2013	05.03.13
13/18	Crime and Courts Bill: Committee Stage Report	08.03.13
13/19	Energy Bill: Committee Stage Report	12.03.13

## Research Paper 13/22

**Contributing Authors:** Catherine Fairbairn, Home Affairs Section, Same sex marriage  
Doug Pyper, Business and Transport Section, *Equality Act* and employment  
Nerys Roberts, Social Policy Section, Education  
Djuna Thurley, Business and Transport Section, Pensions

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

We welcome comments on our papers; these should be e-mailed to [papers@parliament.uk](mailto:papers@parliament.uk).

## Contents

	<b>Summary</b>	<b>1</b>
<b>1</b>	<b>Introduction</b>	<b>2</b>
<b>2</b>	<b>Second reading debate</b>	<b>2</b>
<b>3</b>	<b>Public Bill Committee</b>	<b>2</b>
<b>4</b>	<b>Evidence</b>	<b>2</b>
<b>5</b>	<b>Bill reported without amendment</b>	<b>2</b>
<b>6</b>	<b>Significant areas of debate in Public Bill Committee</b>	<b>3</b>
	6.1 Drafting of Clause 1 (Extension of marriage to same sex couples)	3
	6.2 The purpose of marriage	3
	6.3 Status of canon law	3
	6.4 Marriage counselling and related services	4
	6.5 Conscientious objection	5
	6.6 Premises where same sex marriage could not be solemnised	5
	6.7 Should civil partnerships be available to opposite sex couples?	6
	6.8 Disagreement between individual minister and religious organisation	7
	6.9 What does “compelled” mean?	7
	6.10 The position of teachers	8
	6.11 Prohibition of discrimination based on statements	8
	6.12 Marriage according to religious rites: opt-in and opt-out activity	9
	6.13 Definition of marriage	11
	6.14 Marriage in places of worship: definition of terms	11
	6.15 Church sharing	11
	6.16 Conversion of civil partnership into marriage	12
	6.17 Northern Ireland	12
	6.18 Effect of extension of marriage	13
	6.19 Adultery and consummation	13
	6.20 Gender recognition: reinstatement of marriage	14
	6.21 Consular marriage	14
	6.22 Marriage according to the usages of approved organisations	14
<b>7</b>	<b>Ministerial undertakings to consider</b>	<b>15</b>
	7.1 Power to allow for marriage of same sex couples in the Church in Wales	15
	7.2 Occupational pensions and survivor benefits	15

7.3	Gender recognition: fast track procedure	17
7.4	Delegated legislation	17
7.5	Prohibition of sanctions against clergy	17
	<b>Appendix 1 – Members of the Public Bill Committee</b>	<b>19</b>

## Summary

The *Marriage (Same Sex Couples) Bill* would introduce civil marriage for same sex couples in England and Wales, and enable religious organisations to opt in to conduct same sex marriages if they wish to do so. The Bill includes provisions intended to protect religious organisations and individuals from being forced to conduct same sex marriages. The Bill would also enable civil partners to convert their civil partnership to a marriage and would enable married transsexual people to gain legal recognition in their acquired gender without having to end their marriage.

The proposals have proved highly controversial with interested parties expressing strong opinions both for and against same sex marriage.

Four members of the Public Bill Committee, three from the Conservative Party and one from the Democratic Unionist Party, voted against the Bill at second reading and provided the main opposition to the Bill in Committee.

The Committee considered many amendments and several new clauses, none of which were moved by the Government. The Committee divided on a number of occasions. None of the amendments and new clauses was agreed to, and the Bill was reported without amendment.

Ministers committed to consider further a number of matters:

- marriage of same sex couples in the Church in Wales;
- occupational pensions and survivor benefits;
- a new fast track procedure for some transsexual people to gain a gender recognition certificate.

Hugh Robertson, Minister of State at the Department for Culture, Media and Sport, also confirmed that the Government would look very carefully at any representations made by the Delegated Powers and Regulatory Reform Committee.

Further background and information about the Bill is provided in [Library research paper 13/08](#) (31 January 2013), which was prepared for the Bill's second reading.

## 1 Introduction

The *Marriage (Same Sex Couples) Bill* was introduced into the House of Commons on 24 January 2013 as Bill 126 of 2012-13 and had its second reading debate on 5 February 2013.<sup>1</sup> The Bill had 13 sittings in a Public Bill Committee between 12 February 2013 and 12 March 2013. A further session agreed for 12 March 2013 in the programme motion was not used.

Further background and information about the Bill is provided in [Library research paper 13/08](#) (31 January 2013), which was prepared for the Bill's second reading.

The Bill would extend to England and Wales, although some provisions, detailed in the Explanatory Notes, (including provisions dealing with the treatment in the rest of the UK of marriages of same sex couples conducted in England and Wales; provisions relating to a change in gender of a married person or civil partner; and provisions relating to marriage overseas) would extend to Scotland and Northern Ireland.<sup>2</sup>

## 2 Second reading debate

The *Marriage (Same Sex Couples) Bill* was introduced at second reading by Maria Miller, Minister for Women and Equalities. Yvette Cooper, Shadow Equalities Minister, supported the Bill. Strong opinions were voiced both for and against the Bill. Members had a free vote and opposition to the Bill did not follow traditional party lines. Many Conservative members voted against the Bill.<sup>3</sup> Second reading was agreed on division, 400 votes to 175. The Commons also agreed, by 464 votes to 38, to the Bill continuing its passage through Parliament in the next session if it is not completed in the current session.

## 3 Public Bill Committee

David Burrowes (Conservative) referred to there being four “dissenters” who had voted against the Bill, of which he was one, on the Public Bill Committee and said that “the majority of the amendments, the scrutiny and the opposition is coming from the dissenters”.<sup>4</sup> The other three “dissenters” were Tim Loughton (Conservative), Jim Shannon (DUP) and Kwasi Kwarteng (Conservative).

## 4 Evidence

At its first four sessions, the Committee heard evidence from numerous witnesses. Written submissions sent to the Committee are available on the Bill page on the [Parliament website](#).<sup>5</sup>

## 5 Bill reported without amendment

The Committee considered many amendments and several new clauses, none of which were moved by the Government. The Committee divided on a number of occasions. None of the amendments and new clauses was agreed to, and the Bill was reported without amendment.

---

<sup>1</sup> [HC Deb 5 February 2013 cc125-231](#)

<sup>2</sup> [Bill 126—EN](#), pp5-7

<sup>3</sup> See for example, “[Gay marriage: MPs back bill despite Conservative backbench opposition](#)”, *BBC News*, 5 February 2013 [accessed 13 March 2013]

<sup>4</sup> [PBC Deb 26 February 2013 c173](#)

<sup>5</sup> [House of Commons Public Bill Committee on the Marriage \(Same Sex Couples\) Bill 2012-13](#) [accessed 13 March 2013]

## 6 Significant areas of debate in Public Bill Committee

This section of this paper provides information about issues debated in Committee which did not lead to the Bill being amended. It is not intended to be an account of all the issues raised in Committee or of all the contributions made to debates.

### 6.1 Drafting of Clause 1 (Extension of marriage to same sex couples)

David Burrowes suggested that the drafting of Clause 1(1) was confusing and moved an amendment (which was later withdrawn), which was considered with other proposed amendments, on the wording of the subsection. He drew a distinction between marriage being “lawful” and “legitimate”, and said that one of the amendments (Amendment 16) would set out a “clear understanding of how marriage is being redefined”. He spoke of an opportunity for the Bill to clarify that it would not limit people’s opportunity to dissent. Another amendment dealt with whether same sex marriage would be deemed to be morally equivalent to opposite sex marriage. A further amendment probed why the Government had extended the original proposals which dealt only with civil marriage.

Hugh Robertson, Minister of State at the Department for Culture Media and Sport, said that two of the amendments would call into question whether marriage of same sex couples had legal effect, and ran the risk of creating “a new and slightly second-class category of marriage for same sex couples” which was not the Government’s intention. He considered that it was not for the law to dictate the moral value that people place on marriage. People would still be free to hold the view that marriage is an institution created for one man and one woman. The Bill would enable those religious organisations that wished to marry same sex couples to do so, in consequence of consultation responses.<sup>6</sup>

### 6.2 The purpose of marriage

David Burrowes moved an amendment which would have inserted into the Bill a definition of the purpose of marriage. His amendment included what he called “a traditional understanding of marriage” and another amendment considered at the same time would “accommodate a new understanding of the purposes of marriage”. Hugh Robertson disagreed that there should be a definition in law of the purpose of marriage. He considered that it was not for the Government to prescribe, for example, that a marriage which did not involve procreation had failed in some purpose – although David Burrowes, in turn, refuted that that was the purpose of the amendment. The Minister said that marriage means different things to different people. David Burrowes said that he was not questioning the value of same sex couples nurturing children but was probing “how the purposes of marriage, which have been recognised and spoken about in church services up and down the land, have informed our understanding of the institution of marriage”.

The amendment was withdrawn.<sup>7</sup>

### 6.3 Status of canon law

David Burrowes moved an amendment (later withdrawn) intended to confirm that the relationship between the Church of England and the State would not be changed by the Bill and that the Church of England would continue to be able to make provision about marriage. He considered that the provision in clause 1(3) was an unprecedented departure, “in that it permits canon law to define marriage in a different way from statute law”. He said that the amendment explored the “unprecedented dynamic behind subsection (3), which is that the state through Parliament effectively thinks it has a new jurisdiction over the Church of England’s canons, because the Bill says that the canons can be excepted from the

---

<sup>6</sup> [PBC Deb 26 February 2013 cc173-87](#)

<sup>7</sup> [PBC Deb 26 February 2013 cc187-204](#)

provisions". Hugh Robertson considered that the amendment was unnecessary as the Bill as drafted achieved the same result.<sup>8</sup>

#### 6.4 Marriage counselling and related services

The Committee debated an amendment (not moved) intended to clarify that members of the clergy would not be obliged to conduct other services associated with marriage for same sex couples (such as marriage preparation). Hugh Robertson said that the Government did not consider that the common law duty for clergy of the Church of England and the Church in Wales to marry parishioners included a duty to provide marriage preparation, care or counselling, or any other support for couples concerning their marriage. He said that the Church of England and the Church in Wales had not indicated that they believed any differently. The Minister also put on record that Schedule 23 to the *Equality Act 2010* already enabled ministers of religion to restrict participation in the activities they carry out, including the provision of services, because of a person's sexual orientation: "Thus the law already makes it clear that restricting the sorts of services covered by the amendment to opposite sex couples would not be unlawful discrimination because of sexual orientation".<sup>9</sup>

On a separate occasion, the Committee debated a probing amendment moved by David Burrowes (later withdrawn) and a new clause which considered the role of agencies involved in marriage preparation, counselling and introductions. David Burrowes asked for an assurance that public funding would not be withdrawn from organisations which did not provide their services to same sex couples. He also asked for clarification that the charitable status of organisations dealing only with opposite sex couples would not be threatened and that they would not face accusations of discrimination. He considered that the protections in the Bill related to the marriage ceremony only, rather than to marriage more generally.<sup>10</sup>

Hugh Robertson spoke of the need for balance "between the rights of those with deeply held religious or philosophical beliefs and equality for those with a particular sexual orientation". He said that under the provisions of the *Equality Act*, providers of marriage services were already required to provide their services to both opposite sex and same sex couples, unless they fell into one of the exceptions provided by the Act. He also gave some reassurance:

However—this is where we will provide the reassurance that my hon. Friend the Member for Enfield, Southgate seeks—there are two exemptions. First, under paragraph 30 of schedule 3, if the service is generally provided only for people who share a particular protected characteristic, for example heterosexual people, the service provider is permitted to continue to provide that service in that way, if it would be impracticable to provide the service to people who do not share that protected characteristic.

Secondly, and equally importantly—this is the crucial point—paragraph 2 of schedule 23 to the *Equality Act 2010* enables a religious organisation to restrict access to services because of religion, belief or sexual orientation, either because that is necessary to comply with the organisation's doctrine, or to avoid conflict with the strongly held religious convictions of a significant number of the religion's followers. That is the point that is covered with the marriage counselling course.

For the avoidance of doubt, I will read this into the record a third time. Where a church offers a marriage preparation course or counselling services, the existing exemption in

---

<sup>8</sup> [PBC Deb 26 February 2013 cc204-10](#) and [PBC 26 February 2013 cc213-20](#)

<sup>9</sup> [PBC Deb 26 February 2013 cc204-10](#) and [PBC 26 February 2013 cc213-20](#)

<sup>10</sup> [PBC Deb 5 March 2013 cc317-21](#)



the 2010 Act permits it to restrict those services to opposite-sex couples if the conditions of the exemption are met.<sup>11</sup>

The Minister resisted the attempt to extend the exemption to organisations whose sole or main purpose is commercial.

Hugh Robertson also said that the Bill already provided that the introduction of same sex marriage would not affect the meaning of private legal documents drawn up prior to the Bill coming into force. This meant (he said) that in charitable governing instruments a reference to marriage would continue to mean what it was held to mean in law when the instrument was made. He also set out the further exemption for charities:

Furthermore, the 2010 Act contains a particular exemption for charities, which permits them to provide benefits only to people who share the same protected characteristics, such as sexual orientation, if that is in line with their charitable instrument. Charities will therefore already have considered whether any benefits provided only in relation to the marriage of opposite-sex couples are justified and therefore lawful under the Act, or whether they must also provide those benefits to those in a civil partnership.<sup>12</sup>

## 6.5 Conscientious objection

David Burrowes moved an amendment intended to relieve registrars from the duty to conduct same sex marriages if they held a conscientious objection to doing so. Members also considered at the same time another amendment and a new clause based on conscientious objection. David Burrowes spoke of the need to provide “an ongoing space for those registrars in our society who subscribe to a traditional view of marriage, to avoid them having to choose between violating their conscience and losing their livelihoods”. He questioned why clause 2 mentioned registrars (by excluding them from the conscience provision applying to religious organisations) when that clause dealt with marriage according to religious rites, and not to civil marriage. He considered that it was not necessary for all current and future registrars to become same sex marriage registrars. Tim Loughton supported the amendments and said that the new clause would not allow individuals to exercise a conscientious objection if doing so would prevent same sex couples from accessing marriage services at a register office. Hugh Robertson said that registrars are public servants performing statutory duties, and that they should not be allowed to pick and choose their duties. Tim Loughton asked why registrars were being treated differently from some other public servants – for example, doctors may exercise conscientious objection in relation to abortion. Hugh Robertson said that one reason that protection had not been extended to registrars was that their representative body had not asked for it. He considered that it was not clear how the new clause would operate.<sup>13</sup> David Burrowes withdrew one amendment but pressed for a vote on the other amendment (defeated by 15 votes to 4)<sup>14</sup> and on the new clause (New Clause 5) which was defeated by 14 votes to 3.<sup>15</sup>

## 6.6 Premises where same sex marriage could not be solemnised

David Burrowes moved an amendment (later withdrawn) which would have specified that premises owned or under the control of listed bodies could not be licensed for the solemnisation of same sex marriage. The Secretary of State would have power to amend the list. He called the amendment “an extra line of defence” and said that it would put in place a statutory process “whereby everyone would be clear about who wished to license

---

<sup>11</sup> [PBC Deb 5 March 2013 cc330](#)

<sup>12</sup> [PBC Deb 5 March 2013 cc330](#)

<sup>13</sup> [PBC Deb 26 February 2013 cc220-38](#)

<sup>14</sup> [PBC Deb 28 February 2013 c314](#)

<sup>15</sup> [PBC Deb 12 March 2013 c477](#)

same sex marriage and who did not". Hugh Robertson considered that the Bill already provided religious protections and an opt-in system and that the amendment would add unnecessary bureaucracy. He pointed out that the amendment was not limited to religious organisations and would enable non-religious and commercial organisations to prevent same sex marriages from being carried out, contrary to the Government's intention; but said that he would have resisted the amendment even if it applied only to religious premises.<sup>16</sup>

### **6.7 Should civil partnerships be available to opposite sex couples?**

New clauses which would have removed the prohibition on opposite sex couples registering a civil partnership were considered at the same time as the Committee debated whether Clause 1 should stand part of the Bill. Stephen Williams (Liberal Democrat) said that the new clauses would "complete the circle of equality" and gave three reasons for advancing the proposal: that there should be parity of esteem between civil partnerships and civil marriage; that there may be demand from opposite sex couples for civil partnerships; and that the legal rights of unmarried couples, or couples not in a civil partnership, are not equal to those of couples who are married or in civil partnerships.

Hugh Robertson said he understood the arguments behind the new clauses, but listed five points which he considered balanced them:

- the fundamental purpose of the Bill was to extend marriage to same sex couples, "the Bill points in that direction, rather than back towards opening up civil partnerships"; civil partnerships were not designed to be an alternative to marriage, their aim was "to give same sex couples rights that are broadly equivalent to those already enjoyed by opposite sex couples through marriage";
- the institution of marriage was available to opposite sex couples who wanted the rights, responsibilities and protections of marriage;
- opposite sex couples could marry through either a civil or a religious ceremony and it was not clear what detriment could be suffered by an opposite sex couple in not being able to register as civil partners;
- it was important to distinguish between those who called for the change and those who would avail themselves of it;
- the new clauses would not deal adequately with the legislative complexities of opening up civil partnerships to opposite sex couples.

The Minister concluded:

[A]lthough I hear the argument and understand the case being made, I am not convinced that opening up civil partnerships to opposite-sex couples is necessary. It would risk the central aim of the Bill and would almost certainly delay it while the other legal consequences were worked through.<sup>17</sup>

The Committee divided on the question of whether Clause 1 should stand part of the Bill. The question was agreed to by 13 votes to 4.

The new clause was defeated by 12 votes to 1.<sup>18</sup>

---

<sup>16</sup> [PBC Deb 26 February 2013 cc238-42](#)

<sup>17</sup> [PBC Deb 26 February 2013 cc242-56](#)

<sup>18</sup> [PBC Deb 12 March 2013 c467](#)

## 6.8 Disagreement between individual minister and religious organisation

Shadow spokesperson for Equalities, Kate Green, moved a probing amendment (which was later withdrawn) about the ability of individual ministers to refuse to conduct same sex marriages even if the religious institution of which they were members wanted all its ministers to carry them out. Kate Green said that she wished to explore the Government's intentions as to whether one view or the other would prevail. In evidence to the Committee, the Equality and Human Rights Commission had raised the issue of interference with the freedom of religious organisations to discipline their members on this point. David Burrowes said that the amendment would expose individual clergy to potential sanctions from their religious organisation for refusing to conduct same sex marriages.

Hugh Robertson set out the Government's commitment and intention that no religious organisation or individual would be compelled to conduct, or otherwise participate in, a same sex marriage ceremony. He said that he understood the concern that this would interfere with the right of a religious organisation to manage its own affairs, but said that it was a question of balancing competing rights, and ensuring that individual ministers of religion were protected from being compelled to conduct a same sex marriage ceremony against their conscience.

The Minister thought it "highly unlikely" that any religious organisation which opted in to the conduct of same sex marriages would then compel individual ministers to conduct such services contrary to their own personal religious beliefs. He said that permitting individual ministers to decline to conduct same sex marriages need not result in any detriment to same sex couples, because the religious organisation would be able to find another minister to carry out same sex marriage services.<sup>19</sup>

## 6.9 What does "compelled" mean?

David Burrowes moved an amendment to introduce a definition of the word "compelled":

and enshrine in statute—so that everyone is clear without having to risk the prospect of litigation and the costs of challenge—the Government's assurance that religious organisations will not be required under any circumstances to conduct same-sex marriages if they object to them. There will be no doubt. The 100% promise will be clear.

The amendment (he said) was intended to protect religious organisations from civil and criminal penalties if they decided not to opt in.

Hugh Robertson resisted the amendment; he did not think it added anything or changed the effect of the clause: "The concept of compulsion is readily understood and does not need clarification of this sort". He said that the word "compelled" was used in its normal sense in the English language.<sup>20</sup>

David Burrowes welcomed the Minister's assurances but remained concerned that it did not go far enough: "There needs to be clarity about its being unlawful for there to be any challenges that affect the Churches in terms of unfavourable treatment". David Burrowes pressed for a division and the amendment was defeated by 15 votes to 4.<sup>21</sup>

---

<sup>19</sup> [PBC Deb 28 February 2013 cc259-82](#)

<sup>20</sup> [PBC Deb 28 February 2013 cc259-82](#)

<sup>21</sup> [PBC Deb 28 February 2013 c314](#)

## 6.10 The position of teachers

The position of teachers was discussed at length in relation to a series of grouped amendments (31, 32, 33, 34, and New Clause 7). Amendment 34, moved by David Burrowes (and later withdrawn) aimed to protect teachers and other employees (see section 6.11 of this paper) from “discrimination or other unfavourable action” for teaching or stating that they did not believe same and opposite sex marriage to be morally equivalent.

Amendment 31 would have inserted a new provision into section 403 of the *Education Act 1996*, which is concerned with Sex and Relationships Education (SRE) in maintained schools. It aimed to ensure a school would not be required, under any guidance issued, to promote or endorse an understanding of marriage which was “contrary to the character and designation” of that school. New Clause 7 would have given parents the right to remove their children from any lesson – not just SRE – which taught about same sex marriage in a way that did not accord with the parents’ beliefs.

Speaking in support of the grouped amendments, Tim Loughton drew attention to legal commentary by John Bowers QC which suggested that, were the Bill to become law, teachers (and others) might face allegations of discrimination and sanctions by their employers.<sup>22</sup> Jim Shannon argued that unless protections for teachers were included on the face of the Bill, “all the vague promises of protection will be worthless”.<sup>23</sup>

Chris Bryant, opposing the amendments, stated that they “create hypothetical situations that do not really exist” and that they completely misunderstood the nature of teaching.<sup>24</sup> Amendment 31 was put to a vote but was not carried (defeated by 15 votes to 4); the proposal to insert a new Clause 7 was withdrawn.

The position of teachers was also raised elsewhere during proceedings – see for example:

- [First sitting](#): Contributions from Maria Miller, the Secretary of State for Education Michael Gove, David Burrowes and other committee members.<sup>25</sup>
- [Eleventh sitting](#): Contributions from Jim Shannon and Hugh Robertson.<sup>26</sup>
- [Thirteenth sitting](#): Contributions from Tim Loughton, Jim Shannon and others.<sup>27</sup>

## 6.11 Prohibition of discrimination based on statements

David Burrowes moved an amendment (34) to clause 2 that sought to protect employees from discrimination for stating that a same sex marriage is not morally equivalent to a marriage between a man and a woman.<sup>28</sup> Amendment 34 was discussed with a number of others (31-33) and a proposed new clause (7), all of which focused on the expression of views. Mr Burrowes stated that the amendment was aimed at situations like that faced by Adrian Smith, who lost his job with Trafford Housing Trust for posting a statement on his Facebook page which referred to same sex marriage as “an equality too far?”<sup>29</sup> Amendment 34 also sought to protect teachers for teaching that same sex marriage is not morally equivalent to heterosexual marriage (see section 6.10 of this paper).

---

<sup>22</sup> [PBC 28 February 2013 c 300](#)

<sup>23</sup> [PBC 28 February 2013 c 294](#)

<sup>24</sup> [PBC 28 February 2013 c290](#)

<sup>25</sup> [PBC 12 February 2013 c 5 onwards](#)

<sup>26</sup> [PBC 7 March 2013 c 416-421](#)

<sup>27</sup> [PBC 12 March 2013 c 478 onwards](#)

<sup>28</sup> [PBC Deb 28 February 2013 c285](#)

<sup>29</sup> See, [Marriage \(Same Sex Couples\) Bill](#), House of Commons Library Research Paper 13/08, 31 January 2013, pp13-14

Chris Bryant said that carving out a particular freedom of expression in relation to the concept of same sex marriage would suggest there is less freedom in relation to comments about other matters.<sup>30</sup> Jim Shannon stated that without the protection the freedom to disagree publically may be under serious threat.<sup>31</sup> Mr Shannon cited examples from the United States of America and Canada. He said similar legislation there led to a situation where people and organisations that maintain “the traditional view of marriage” were potentially subject to censorship.<sup>32</sup>

Hugh Robertson said that he understood the concerns about the Facebook case although pointed out that Mr Smith won his case in court, which he said underscored Mr Smith’s “right to hold that view, provided he did not express it in a discriminatory or unpleasant manner”.<sup>33</sup> The Minister expressed concern that the amendment as drafted went too far:

Amendment 34 is a wide-ranging measure that would ensure protection for someone who wants to express a view that the marriage of same-sex couples is not morally equivalent to marriage between a man and a woman, in the context of employment and the provision of goods and services. The problem with the amendment is that, as far as we can see, such protection would apply however and whenever that statement was made. To give one of the famous examples that have so far characterised the Committee’s deliberations, a hotel employee who stood and preached loudly against the marriage of same-sex couples in the middle of a lawful marriage ceremony or reception that was being conducted in a hotel where he was employed would be free to do so without any fear that his employer would take action against him. I would not find such behaviour acceptable, and I suspect most of the Committee would find it unacceptable. I am sure that my hon. Friend the Member for Enfield, Southgate would not condone it either, but it would be protected by the amendment.<sup>34</sup>

The Minister said that “no employee will be required to promote or endorse views about same sex marriage that go against their conscience” and that this would not be limited by the prohibition of discriminatory and offensive conduct.<sup>35</sup>

Amendment 34 was withdrawn.

## 6.12 Marriage according to religious rites: opt-in and opt-out activity

“Opt-in activities” are listed in a table in Clause 2 of the Bill – the Government’s Explanatory Notes summarise the list as meaning “the various types of activity relating to the decision of a religious organisation to opt-in to solemnizing marriage for same sex couples”; opt-in activities would include, for example, applying for the registration of a building. An “opt-out activity” is defined as an activity which reverses or otherwise modifies the effect of an opt-in activity.

The Committee debated an amendment (27), moved by David Burrowes, which sought to provide protections to religious organisations where they decide whether to undertake an opt-in activity or refrain from undertaking an opt-out activity.<sup>36</sup> Mr Burrowes suggested that such decisions might be subject to potential challenge under the prohibition, in [section 29](#) of the *Equality Act 2010*, of discrimination in the provision of services and exercise of public functions. The amendment sought to prevent this possibility.

---

<sup>30</sup> [PBC Deb 28 February 2013 c290](#)

<sup>31</sup> [PBC Deb 28 February 2013 c291](#)

<sup>32</sup> [PBC Deb 28 February 2013 c293](#)

<sup>33</sup> [PBC Deb 28 February 2013 c295](#)

<sup>34</sup> [PBC Deb 28 February 2013 c310](#)

<sup>35</sup> [PBC Deb 28 February 2013 c311](#)

<sup>36</sup> [PBC Deb 5 March 2013 cc332-351](#)

A group of amendments and a proposed new clause were discussed alongside amendment 27 (amendments 28-30 and new clause 16). They sought to protect those who make decisions about opt-in and opt-out activities from unfavourable treatment by a local authority. Mr Burrowes said that such treatment may result from the public sector equality duty, under [section 149](#) of the *Equality Act*, which requires authorities to have due regard to the need to prohibit discrimination and advance equality of opportunity. One of the amendments also sought additional protections for trustees, who make decisions about the use of property for same sex marriage, from falling foul of the prohibition in section 29 if the *Equality Act*.

Hugh Robertson said that the amendment to protect persons who make decisions about opt-in or out activities was unnecessary as such decisions would not be caught by section 29 of the *Equality Act*.

...religious organisation's decision whether to opt into conducting same-sex marriages is neither a service to the public or a section of the public, nor a public function. For that reason, the decision is not within the scope of section 29 of the Equality Act, nor is it within the scope of the Human Rights Act—I am happy to read that into the record—contrary to some views that have been expressed. The fact that undertaking an opt-in activity would enable a religious organisation subsequently to offer services to the public does not make any prior conduct also a service. Furthermore, the fact that undertaking an opt-in activity would enable a religious organisation subsequently to conduct same-sex marriage, which has legal effect, does not make any prior conduct a public function.

The decision to opt in or not to opt in, or, having opted in, subsequently to opt out—that is a great line, is it not?—is clearly a matter for the religious organisation concerned. Such decisions are therefore not susceptible to claims under the Equality Act or the Human Rights Act. Indeed, our problem with the amendments, which we have considered carefully, is that, in other contexts, they would risk creating doubt about whether decisions made by religious organisations are also services or public functions.<sup>37</sup>

As to the discussed amendment concerning trustees, the Minister said:

...I am happy to confirm that a trustee of a trust for the advancement of religion who refuses to consent to the use of a building owned or controlled by that trust for the marriage of same-sex couples would already fall squarely within an existing exemption in paragraph 2 of schedule 23 to the Equality Act.<sup>38</sup>

The Minister said the amendments and new clause relating to the public sector equality duty were unnecessary as a public authority would be acting unlawfully if it penalised an organisation for making a decision it was entitled by law to make. This reflected evidence given to the Committee by Lord Pannick QC, who stated that such a decision to penalise a religious organisation could be subject to a successful legal challenge.<sup>39</sup>

The moved amendment was pressed to a division and defeated by 12 votes to three.<sup>40</sup>

---

<sup>37</sup> [PBC Deb 5 March 2013 c 348](#)

<sup>38</sup> *Ibid*

<sup>39</sup> [PBC Deb 5 March 2013 c349](#)

<sup>40</sup> [PBC Deb 5 March 2013 c350](#)

### 6.13 Definition of marriage

The Committee considered the meaning of marriage during the stand part debate on Clause 3 (marriage for which no opt-in necessary). David Burrowes considered that Clause 3 changed the understanding of marriage for everyone. Tim Loughton said it set the course for “what some might term the privatisation of marriage, whereby the institution means only what two people choose it to mean rather than a public institution that society itself uses as a basis for its language and its prosperity”.<sup>41</sup> He questioned whether there was a distinction between civil and religious “marriage”, as opposed to “wedding ceremony”. Helen Grant, Parliamentary Under-Secretary of State for Women and Equalities, said that the Bill simply opened up marriage to a group of people who had previously been excluded from it and that there had never been one definition of marriage: “it is an institution with a long history of change”.<sup>42</sup> The question that Clause 3 stand part of the Bill was agreed to by 13 votes to 4.

### 6.14 Marriage in places of worship: definition of terms

David Burrowes, supported by Tim Loughton, moved a probing amendment intended to define issues related to who would be authorised to consent to an application to register a building for same sex marriage. He considered that, without definitions, there could be problems and spoke of the possibility of internal disputes and the practicalities of shared buildings. Tim Loughton asked how local authorities would know whether someone saying that they represented a church had actually been mandated to do so, and said that the amendment was designed to “bring clarity” when there were competing claims about who was legally competent to speak for a particular religious organisation. If an internal dispute could not be resolved (he said) the Secretary of State might need to become involved.

Helen Grant replied that the Government did not consider it right to seek to regulate the internal governance of religious organisations in such a way; that the Bill was sufficiently clear about what was required; that disputes should be resolved internally; and that if a religious organisation could not agree what was its governing authority, it would not be possible for it to provide the necessary written consent to apply for registration of its place of worship for the solemnisation of marriages of same sex couples.

The Minister said that the General Register Office would provide guidance and training for registrars in preparation for the provisions permitting same sex marriage coming into force.

The amendment was withdrawn.<sup>43</sup>

In a letter to David Burrowes dated 11 March 2012, Helen Grant said that it was intended that the General Register Office would retain one list of registered buildings and that buildings which were registered to solemnise marriages of same sex couples (whether or not in addition to marriages of opposite sex couples) “would simply be clearly identified on that list”.<sup>44</sup>

### 6.15 Church sharing

David Burrowes moved a probing amendment which would have removed from Schedule 1 the provisions relating to the registration of shared buildings for same sex marriage. He questioned whether the principle of enabling opting into same sex marriage ceremonies

---

<sup>41</sup> [PBC Deb 5 March 2013 cc356](#)

<sup>42</sup> [PBC Deb 5 March 2013 c363](#)

<sup>43</sup> [PBC Deb 5 March 2013 c364-78](#)

<sup>44</sup> [DEP2013-0453](#) Letter dated 11/03/2013 from Helen Grant MP to David Burrowes MP regarding Marriage (Same Sex Couples) Bill

would create division and undermine the sharing arrangements that had developed over time.

Chris Bryant (Labour) moved an amendment which would have removed the right of one party to a church sharing arrangement to veto the use of the building for same sex marriage: “so that no one can prevent everybody else from exercising their conscience in favour of performing same sex marriages”. He felt that the Government had the wrong balance in the Bill on this point.

Helen Grant resisted both amendments. She acknowledged the difficulty of the protection versus freedom argument and said that the provision “certainly tilts on the side of protection”.

David Burrowes withdrew his amendment. Chris Bryant’s amendment was defeated by 9 votes to 6.<sup>45</sup>

### **6.16 Conversion of civil partnership into marriage**

David Burrowes moved an amendment which would have required a ceremony for the conversion of a civil partnership into a marriage. Supporting the amendment, Jim Shannon (DUP) said that giving vows was central to the identity of marriage. He commented that the Bill would create “the vowless marriage” by making provision for civil partners to convert their civil partnerships to marriages “simply courtesy of some paperwork mandated by the Registrar General or Secretary of State”. He considered that without vows, there would be a difference from marriage and that the proposal that “some should be able to get married without vows, when everyone else can get married only with vows creates a discriminatory framework that is anything but equal to marriage”.

Hugh Robertson replied that he did not believe that it would be right for the Registrar General or the Secretary of State to compel a couple in a civil partnership, who had already gone through a civil partnership registration, to go through a second ceremony with the costs and potential inconvenience that that might entail, when their commitment to each other was not in doubt. He also said that it was a matter of freedom of choice between a straightforward administrative process and a more public ceremony.

The amendment was defeated by 11 votes to 4.<sup>46</sup>

### **6.17 Northern Ireland**

Jim Shannon moved a probing amendment to omit the provisions dealing with the recognition of same sex marriages solemnised under the law of England and Wales as civil partnerships in Northern Ireland. He drew attention to the provision of the Bill which required the Secretary of State or Lord Chancellor to “obtain the consent” of the Scottish Ministers before making any order under the Bill but only to “consult” the Department of Finance and Personnel” – “so that the Government can if they wish override its view”. He said that the Northern Ireland Assembly had decided to oppose the Bill and asked whether the Government intended to break the convention and override the Northern Ireland Assembly. He also asked whether there would be exclusions for the teaching curriculum.

Jim Shannon said that if the Government wanted the law in Northern Ireland to recognise same sex marriages formed in England as though they were civil partnerships, “they should ask those who hold the democratic mandate and the legislative authority to do that”. He also asked for assurance that the provisions would not be used in litigation to press for a change in the law in Northern Ireland against the democratic will of the Stormont Assembly.

---

<sup>45</sup> [PBC Deb 5 March 2013 c378-92](#)

<sup>46</sup> [PBC Deb 7 March 2013 c399-411](#)



Hugh Robertson said that the effect of the amendment would be to leave a same sex couple married under the Bill with no legal status in Northern Ireland. The provisions in the Bill were intended to address that issue. He continued by giving certain assurances:

Just to give the hon. Member for Strangford absolute confidence and clarity, these provisions would not permit provisions to be made that same-sex marriages should be recognised in Northern Ireland under Northern Irish law as marriage. Nor do they permit any extension of marriage under the law of Northern Ireland. I am happy to give him those two assurances.

The hon. Gentleman asked two questions. The first was about education. I am happy to post it on the record here, that this Bill will not affect teaching in Northern Irish schools. Same-sex marriage is already available in other jurisdictions outside Northern Ireland, such as Portugal and Canada, and the fact that it would also be possible in England and Wales does not affect education in Northern Ireland. As to whether there will be any pressure to introduce equal marriage for equality reasons, I can say there is absolutely no requirement on Northern Ireland to introduce same-sex marriages, neither an equality requirement nor a requirement under the European convention on human rights. Marriage is a devolved matter for Northern Ireland and it is for the Northern Ireland Assembly to determine matters in that regard.

We are in discussions with Ministers in the devolved Governments, and while these discussions continue—and only while they continue—our view is that these provisions in the Bill are needed. Should they come to the right conclusion in order to safeguard this legal anomaly, we will look at this again. However, while those discussions continue, these provisions are needed.

Jim Shannon withdrew his amendment.<sup>47</sup>

### **6.18 Effect of extension of marriage**

David Burrowes moved an amendment, which he later withdrew, to remove the provision from Clause 11 which would state that in the law of England and Wales, marriage would have the same effect in relation to same sex couples as it has in relation to opposite sex couples. He said that the clause was “extremely broad” and that it was not possible to know all its implications. He gave examples where there could be difficulties of interpretation and said that the Government should give reassurance that it had looked at all the relevant measures. A probing amendment considered at the same time would have changed the word “marriage” to “union” throughout the Bill where it related to same sex couples.

Hugh Robertson resisted both amendments and said they would create a hierarchy of marriage. The Government did not intend to create a separate institution of marriage or of purported marriage, but intended that all couples could enjoy the rights and benefits of being married. He said that the Government recognised that there would be particular cases that would require a different interpretation of the law, and the Bill already made some provision for this.<sup>48</sup>

### **6.19 Adultery and consummation**

David Burrowes moved an amendment to remove from the Bill the provisions relating to adultery and consummation. He asked how the Government could justify “the inequality” that adultery and consummation would apply to opposite sex couples but not to same sex couples. He said that if the provisions were removed, the matter would be left to case law.

---

<sup>47</sup> [PBC Deb 7 March 2013 cc414-22](#)

<sup>48</sup> [PBC Deb 7 March 2013 cc425-31](#)

Tim Loughton spoke of “double standards at the heart of the Bill” and said that “if the standards of commitment required are different from those required in a marriage, it would be wrong to categorise [a same sex relationship] as marriage”. Hugh Robertson replied that to leave definitions to case law would create uncertainty for couples. He spoke of the difficulty of defining the terms in relation to same sex couples and he did not consider that different treatment in this regard meant that same sex couples should not be married. The amendment was withdrawn.<sup>49</sup>

### **6.20 Gender recognition: reinstatement of marriage**

At present, it is necessary for a marriage to be ended for one spouse to obtain a full gender recognition certificate. The Bill would remove this requirement. Kate Green moved an amendment to provide that where couples had ended their marriage in those circumstances, but continued to live together as a couple, before and after the enactment of the Bill, that marriage would be reinstated.

Helen Grant said that the Government sympathised with couples who had been required to make “the very difficult choice” as to whether to end their marriage to enable one of the parties to obtain gender recognition. However, she resisted the amendment saying “We have to take the law as we find it. It is not possible simply to undo the fact that the previous marriage was lawfully ended”. She considered that a retrospective change could also have unpredictable consequences, in terms of any rights and responsibilities that the couple had accrued since their marriage was annulled.

Kate Green pressed for a division on the amendment which was defeated by 9 votes to 3.<sup>50</sup>

### **6.21 Consular marriage**

In response to a question from Tim Loughton, Helen Grant confirmed that conducting same sex marriages without host Government permission could be contrary to international law and risk damaging bilateral relations: “if we did not have the agreement of the host country, of course it would not happen”.<sup>51</sup>

### **6.22 Marriage according to the usages of approved organisations**

Stephen Williams moved that New Clause 3 should be read a second time. New schedule 1 was considered at the same time. The new provisions would enable the Registrar General to designate a celebrant to solemnise marriages according to the usages of an organisation (as specified). Stephen Williams said that the main purpose of the new clause was to facilitate humanist weddings. At present, humanist weddings do not have legal force and the parties must have an additional ceremony (for example, at a register office) for the marriage to be legally valid. Helen Grant resisted the new provisions saying that they would result in “a significant change to the fundamental structure of marriage law in England and Wales”. She said that the new provisions would go far wider than the scope of the Bill and would change the position for marriages of both same sex and opposite sex couples. The Bill was intended only to open up marriage to same sex couples. The Minister did not think it appropriate that, for example, humanists should be able to solemnise marriage in the open air when others might also want to be able to do this. She said that there were a number of issues in marriage law which merited further consideration but that this should be done “in a careful and co-ordinated manner, rather than for individual aspects to be dealt with in isolation”. The

---

<sup>49</sup> [PBC Deb 7 March 2013 cc433-41](#)

<sup>50</sup> [PBC Deb 7 March 2013 cc447-52](#)

<sup>51</sup> [PBC Deb 7 March 2013 c454](#)

Government would consider amendments to marriage law when an appropriate legislative opportunity arose.<sup>52</sup>

A division on the new clause was tied at 7 votes each for and against; the Chair, who had the casting vote, said that, in accordance with precedent, he would leave the Bill unamended and give his vote to the Noes.<sup>53</sup>

## 7 Ministerial undertakings to consider

### 7.1 Power to allow for marriage of same sex couples in the Church in Wales

Clause 8 would provide that, if the Lord Chancellor was satisfied that the Governing Body of the Church in Wales had resolved that the law of England and Wales should be changed to allow for marriage of same sex couples according to the rites of the Church in Wales, the Lord Chancellor “may” by order make such provision as the Lord Chancellor considered appropriate to allow such marriages. Kate Green moved an amendment to change the word “may” to “shall”. She said that it should be a matter for the Church in Wales to determine for itself when and whether to carry out same sex marriages and “it would be a matter of regret if, the Church having made that decision, the Lord Chancellor were to then take an opposite view and seek to prevent the Church’s decision being given effect”. She therefore wanted the Lord Chancellor to be required to go through the necessary procedures to give effect to a decision of the Church in Wales and that it should not be optional. Stephen Doughty (Labour/Co-op) pointed out that the Church’s representative had specifically asked for this change.

Helen Grant resisted the amendments and said that it would not be appropriate for the Lord Chancellor to be forced to make an order even if sure, for good reasons, that that order would not enjoy the support of Parliament. She did not think there could be any doubt that, in practice, the Lord Chancellor would be bound, when properly requested by the Church in Wales, to make an appropriate order.

Kate Green said that she would withdraw the amendment if the Under-Secretary gave “categorical assurances that the concerns of the Church in Wales will be met on Report”. Helen Grant replied: “I am quite content to confirm that we will look at the issue very carefully”. The amendment was withdrawn and Kate Green said that the matter would be raised again on Report.<sup>54</sup> Hugh Robertson later confirmed that the Government would work on this issue and if it was able to meet the requirements of the Church in Wales, it would table a substantive amendment on Report.<sup>55</sup>

### 7.2 Occupational pensions and survivor benefits

The *Equality Act 2010* contains an exemption providing that it is not discrimination because of sexual orientation to restrict access to a benefit, facility or service that would be available to a person who was married or in a civil partnership in relation to rights accrued before 5 December 2005 (the date the *Civil Partnerships Act* came into force). This means that an occupational pension scheme as a minimum only has to provide survivor benefits on rights accrued since that date. Part six of Schedule 4 of the current Bill would extend the exception so that it applies to same sex married couples in the same way as to civil partners.<sup>56</sup>

---

<sup>52</sup> [PBC Deb 12 March 2013 cc469-76](#)

<sup>53</sup> [PBC Deb 12 March 2013 c477](#)

<sup>54</sup> [PBC Deb 5 March 2013 c392-96](#)

<sup>55</sup> [PBC Deb 7 March 2013 c399](#)

<sup>56</sup> [Marriage \(Same Sex Couples\) Bill 2012-13](#), Schedule 4, para 15; [Explanatory Notes](#), para 123

Kate Green moved an amendment that would remove the exemption.<sup>57</sup> She referred to a recent employment tribunal decision on the issue:

In January of this year, Liberty acted on behalf of a client, John Walker, who won a legal battle to secure equal pension benefits for his civil partner. In that case, the employment tribunal found that an occupational pension scheme that provided that John's civil partner could only benefit from pension rights accrued since 2005 when civil partnerships became available in the UK was directly discriminatory.[...] If the legislation is not amended to take account of the Walker judgment and the reliance on the European Court findings, it is likely that further legal action will be taken by same-sex married partners.<sup>58</sup>

For the Government, Hugh Robertson responded that the exemption in the *Equality Act* had been introduced to "prevent schemes from having retrospective financial obligations towards surviving civil partners that they would not have taken into account in their scheme funding assumptions." The Government did not agree with the finding in the Walker case and was considering its response. It would return to the matter at Report stage. Ms Green withdrew her amendment.<sup>59</sup>

Ms Green also moved an amendment intended to ensure that widows of marriages that became same sex marriages as a result of their spouse's change of legal gender during the marriage would be treated the same as widows of opposite sex marriages for the purpose of survivors' benefits in occupational pension schemes. She explained that:

That issue arises because the Bill makes provision for same-sex married couples to be treated in the same way as civil partners for the purpose of survivors' benefits. We have already discussed the situation in relation to contracted-in pensions, where rights date back to 2005. For contracted-out schemes, the position is a little different. Those schemes are required to make provisions for survivor benefits for civil partners based on the contracted-out rights accrued since 6 April 1988, in line with rules for widowers; however, for widows, the rights to survivors' benefits in contracted-out schemes apply in respect of service back to 1978. There will therefore be a very, very small group of women who stand to lose that extra 10 years of access to survivor benefits if their partner undergoes gender reassignment and the Bill is not changed.<sup>60</sup>

Hugh Robertson said that the Government would consider the issue further and return to it at Report stage:

We understand that for a very small number of people loss of those benefits would indeed be a serious problem; however, I think we all agree that the issue is complex and needs to be looked at very carefully. We need to include consideration of the practical issues both for individuals and for the schemes that would be affected. We would not want to make a change that would result in significant cost to pension schemes and to the public purse. [...] As with the previous amendment, I make it clear to her that that is not an indication that we will accept an amendment, or the reverse; it is simply an undertaking to look at the matter carefully, and bring it back on Report.<sup>61</sup>

---

<sup>57</sup> [PBC Deb, 7 March 2013, c441](#)

<sup>58</sup> [Ibid, c443](#); [Liberty press release, 'Liberty client wins legal fight for equal pension benefits', 23 November 2012](#); [Brick Court Chambers press release, Employment Tribunal reads down Equality Act to give civil partners equal pension rights, 27 November 2012](#)

<sup>59</sup> [PBC Deb, 7 March 2013, c443](#)

<sup>60</sup> [PBC Deb, 7 March 2013, c446](#); See also [PBC Deb, 14 February 2013, Q158](#) [Paula Dooley]

<sup>61</sup> [Ibid, c447](#)

Ms Green withdrew the amendment.<sup>62</sup>

These issues are discussed in more detail in Library Standard Note SN 3035, [Pensions: civil partnerships and same sex marriages](#).<sup>63</sup>

### 7.3 Gender recognition: fast track procedure

Kate Green spoke about new clause 17, the purpose of which was to establish a fast track procedure for gender recognition. The procedure was not set out in detail but the intention would be to model it on a procedure included in the *Gender Recognition Act 2004* (which has now expired). The procedure would apply to people who would have been eligible to apply under the procedure in the 2004 Act but chose not to do so because they knew it would bring their marriage to an end.

Helen Grant said that although she could not accept the new clause as drafted, she was willing to consider whether something could be done “to assist the transsexual people who transitioned a long time ago, who may be concerned that they will be unable to produce the medical evidence from the required medical practitioner”. Any procedure would not apply only to those who were married at the time the 2004 Act came into force.<sup>64</sup>

### 7.4 Delegated legislation

David Burrowes moved an amendment to require all delegated legislation under the Bill to be subject to the super-affirmative procedure, and quoted information about this procedure from *Erskine May*. Hugh Robertson considered that the Bill made appropriate provision for the right level of Parliamentary scrutiny of secondary legislation. He said that the amendment would result in minor consequential amendments to secondary legislation being subject to the same detailed process, including formal consultation. He confirmed that the Delegated Powers and Regulatory Reform Committee would consider the Bill and the Government would look very carefully at any representations the Committee made, if it considered that the level of scrutiny was incorrect, insubstantial or in any way not appropriate to a piece of legislation of this type.<sup>65</sup>

### 7.5 Prohibition of sanctions against clergy

Tim Loughton proposed a new clause (15) which sought to protect members of the clergy employed by a state institution from sanctions or discrimination for refusing to conduct a same sex marriage.<sup>66</sup> Mr Loughton said the clause was drafted in light of the decision in [Eweida and Others v the United Kingdom](#), handed down by the European Court of Human Rights on 15 January 2013, which considered (amongst other issues) an employee’s freedom to refuse, on religious grounds, to perform services for same sex couples.<sup>67</sup>

Hugh Robertson said that the protections sought by the proposed new clause were already provided by clause 2 of the Bill:

...clause 2 plainly states that someone “may not be compelled” to conduct a marriage of a same-sex couple. It would clearly be a compulsion to threaten someone with

---

<sup>62</sup> *Ibid*

<sup>63</sup> SN 3035, last updated 13 March 2013

<sup>64</sup> [PBC Deb 7 March 2013 cc447-51](#)

<sup>65</sup> [PBC Deb 12 March 2013 cc461-6](#)

<sup>66</sup> New clause 15, [PBC Deb 12 March 2013 cc477-498](#)

<sup>67</sup> [2013] ECHR 37; see: [Marriage \(Same Sex Couples\) Bill](#), House of Commons Library Research Paper 13/08, 31 January 2013, pp14-15

disciplinary action or to take other action against them if they refused to do so. I am absolutely happy to place that on the record.<sup>68</sup>

The Minister also stated that the dismissal of a member of the clergy for refusing to conduct a same sex marriage would constitute unlawful religious discrimination:

...the Equality Act 2010 makes it unlawful for an employer to discriminate against somebody because of their religion or belief. If a chaplain was punished or treated less favourably than another employee because of his or her particular belief about the nature of marriage, that would be unlawful discrimination because of religion or belief under the Equality Act, and he or she would be able to bring proceedings against his or her employer. Again, I am happy to place that on the record.<sup>69</sup>

However, the Minister noted that there might be need to strengthen the existing protections for clergy and undertook to consider whether such protections were necessary:

We are absolutely clear, as we have said many times, that a minister must not be forced to conduct a same-sex marriage. It must be clear that refusing to marry same-sex couples is not unlawful sexual orientation discrimination under the Equality Act, but we are looking carefully at whether protections can be strengthened for chaplains who are employed by other than religious organisations and who do not wish to marry same-sex couples. In order to be helpful, therefore, I am happy to give the Committee a commitment that we will take the matter away and look at it carefully. If we are convinced of the case for strengthening that position and for extra protections to give people more confidence, I will do so on Report.<sup>70</sup>

The proposed new clause was withdrawn.

---

<sup>68</sup> PBC Deb 12 March 2013 c495

<sup>69</sup> *Ibid*

<sup>70</sup> *Ibid*

## **Appendix 1 – Members of the Public Bill Committee**

The Committee consisted of the following Members:

**Chairs:** Jim Hood, Gary Streeter

**Members:**

Stuart Andrew (Pudsey) (Con)  
Ben Bradshaw (Exeter) (Lab)  
Chris Bryant (Rhondda) (Lab)  
David Burrowes (Enfield, Southgate) (Con)  
Stephen Doughty (Cardiff South and Penarth) (Lab/Co-op)  
Jane Ellison (Battersea) (Con)  
Stephen Gilbert (St Austell and Newquay) (LD)  
Helen Grant (Parliamentary Under-Secretary of State for Women and Equalities)  
Kate Green (Stretford and Urmston) (Lab)  
Simon Kirby (Brighton, Kemptown) (Con)  
Kwasi Kwarteng (Spelthorne) (Con)  
Tim Loughton (East Worthing and Shoreham) (Con)  
Siobhain McDonagh (Mitcham and Morden) (Lab)  
Alison McGovern, (Wirral South) (Lab)  
Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op)  
Hugh Robertson (Minister of State, Department for Culture, Media and Sport)  
Jim Shannon (Strangford) (DUP)  
Desmond Swayne (Lord Commissioner of Her Majesty's Treasury)  
Stephen Williams (Bristol West) (LD)

**Committee Clerks:** Kate Emms, Alison Groves