

SAME SEX MARRIAGES AND PRE NUPS

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Over the past few weeks there has been an enormous amount of coverage over the issues surrounding same sex couples marrying. The Marriage (Same Sex Couples) Bill was passed with a majority of 225 (400-175), thanks to the overwhelming backing of Labour and the Liberal Democrats on the 5th February 2013. The Bill will allow same-sex couples to marry, either in a civil ceremony (in a register office or on approved premises, such as hotels) or, where the religious organisation's governing body chooses to opt in, on religious premises or with a religious ceremony.

The Bill will: -

- enable same-sex couples to marry in civil ceremonies;
- ensure those religious organisations that wish to do so can opt-in to conduct marriage ceremonies for same-sex couples;
- protect those religious organisations that do not wish to marry same-sex couples from successful legal challenge;
- enable civil partners to convert their partnership to a marriage, if they wish; and
- enable individuals to change their legal gender without having to end their marriage.

Myths or Just Simply Misconceptions?

Due to the apparent negative publicity surrounding the issue of same sex marriages, the Government has been keen to revoke what appear to be the myths surrounding this subject. The Government has produced a list of myths which it perceives to be an inaccurate depiction of what the Bill will mean and given its response to these alleged myths. Some of these are reproduced below:

Myth: Allowing same-sex couples to marry will destroy the institution of marriage.

Reality: Marriage is a hugely important institution in this country. The principles of long-term commitment, and responsibility which underpin it, bind society together and make it stronger. The Government believes that we should not prevent people getting married unless there are very good reasons – and loving someone of the same sex is not one of them.

Myth: Marriage has not changed in hundreds of years.

Reality: Marriage is not static. It has always been an evolving institution. In the 19th century inequalities prevented Catholics, atheists, Baptists and many others from marrying except in the Anglican Church. In the 20th century the law was changed to recognise married men and married women as equal before law. Opening up marriage to all couples will strengthen the vital institution of marriage, and help ensure that it remains an essential building block of society.

Myth: Religious organisations or ministers of religion will be forced to conduct same sex marriages.

Reality: This is not true. The Bill makes clear that no religious organisation, or religious minister, will be compelled to marry same sex couples. A 'quadruple lock' of legal protections will ensure that all religious organisations can act according to their doctrines and beliefs.

Myth: The European Court of Human Rights will force religious organisations to conduct same sex marriages.

Reality: The case law of the European Court of Human Rights makes it clear that same sex marriage is a matter for individual states to decide. Any case before the Court would be brought against the UK Government, not a religious organisation. The Court would be bound to give priority to the rights of a religious organisation under Article 9 of the European Convention on Human Rights, which guarantees the right to freedom of religion.

Myth: Teachers will have to promote same sex marriage to pupils in sex and relationships education.

Reality: This is not true. No teacher will be required to promote or endorse views which go against their beliefs. Teachers will of course be required to teach the factual position that under the law, marriage can be between opposite sex couples and same sex couples. There are many areas within teaching, particularly within faith schools, where this type of issue already arises and where subjects such as divorce are taught with sensitivity. The guidance governing these issues is the same guidance that will govern how same sex marriage in the classroom will be approached. Sex and relationships education is categorically not about the promotion of a particular sexual orientation - that would be inappropriate teaching.

Myth: There is no difference between civil partnership and marriage.

Reality: There are some small legal differences between civil partnerships and marriage. But for many people there are important differences in the perception of and responsibilities associated with these separate institutions

Myth: You are abolishing the terms 'husband', 'wife', 'mother' and 'father'.

Reality: This is not true – these terms will continue to exist. 'Husband' will refer to a male marriage partner and 'wife' will refer to a female marriage partner, as now.

Myth: Not introducing civil partnerships for opposite-sex couples is unfair.

Reality: This is not true. We [do we want to say “we”?? – should this say “the Govt” or do we need to make it clearer that these are not our responses??] believe in the institution of marriage and we [same] do not believe that opposite-sex couples are disadvantaged by not being able to enter into civil partnerships. This Bill is designed to remove the unfairness of same-sex couples being excluded from marriage.

Myth: Adultery won't be grounds for divorce among same sex couples.

Reality: Having a relationship outside a marriage will remain grounds for dissolving that marriage, whether between a same sex or opposite sex couple. However, adultery has a very specific meaning in English law and, therefore, some forms of sexual infidelity do not currently fit the legal criteria for adultery – including where a party to a heterosexual marriage has a relationship with a member of the same sex. In such cases the marriage can be dissolved on grounds of unreasonable behaviour. This will apply equally to couples in same sex marriages, therefore no inequality is created.

Time will tell whether the Bill, in the words of Prime Minister David Cameron, is an “important step forward” in the sacrament of marriage or merely a disaster in the making.



If you are about to take the first steps towards entering into a same sex marriage you should consider the benefits of entering into a pre nuptial agreement. This is a document in which couples set out their rights in relation to any property, debts, income and other assets purchased together and/or acquired individually at the time of entering into the marriage and how they envisage these assets should be divided in the unfortunate and hopefully unlikely event of divorce or separation.

Should you wish to seek further advice about whether a pre nuptial agreement is right for you, please contact Sarah Bradford on 01306 502306 or email Sarah: s.bradford@downslaw.co.uk. If you mention this article your initial appointment is free.

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