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Lords Committee Stage Briefing on Proposed New Clauses and Amendments to the Marriage (Same Sex Couples) Bill

13th June 2013

Introduction and Summary:

The Church's principled objection to the Marriage (Same Sex Couples) Bill was set out in our Second Reading Briefing Note (http://www.catholicnews.org.uk/marriage-same-sex-couples-bill-briefing). We recognise the support that the Bill received at Second Reading in the House of Lords, and our aim is to ensure that the Bill, should it become law, effectively delivers the protections that the Government promised to provide for religious individuals and organisations.

Our legal advice warns that amendments are necessary if freedom of religion and freedom of speech are to be effectively protected. This briefing note sets out the specific amendments proposed to achieve these protections, together with the reasons for them.

For a more detailed assessment of the human rights law implications of the Bill please see Prof. Christopher McCrudden's legal advice to the CBCEW: http://www.catholicnews.org.uk/marriage-same-sex-couples-bill-legal-advice

The amendments cover four key areas of concern. We identified additional areas of concern in earlier briefings but we focus on these four issues as our **major** concerns.

(1) Education:

The Bill creates two potential problems for religious schools: first in relation to current guidance issued by the Secretary of State about marriage, and second in relation to future guidance. Unless protection is built into the Bill, religious schools may be compelled to *commend* and *advocate* same sex marriage under current and/or future guidance issued by the Secretary of State.

(2) Freedom of Speech:

There is a real concern that individuals would be subjected to some form of detriment if they express views or opinions against same sex marriage in two contexts

(a) Criminal sanctions – there is a risk that individuals would be prosecuted under section 29 of the Public Order Act 1986.

(b) Civil sanctions – there is a risk that individuals would be detrimentally treated as a result of the Equality Act 2010.

(3) Individual Rights at Work:

There is nothing in the Bill to protect civil registrars (present or future) who have a conscientious objection to conducting same sex marriage ceremonies.

(4) The 'Locks':

The 'locks' provided in the Bill are fundamentally flawed, in at least four respects:

(a) Protection from 'compulsion' is central to the protection provided for religious individuals and organisations – it constitutes one of the 'locks' – but there is no definition of *'compelled'* in the Bill. This creates significant uncertainty and weakens the scope of the protection that is afforded by the Bill.

(b) The Bill recognises the possibility of legal challenge under section 29 of the Equality Act 2010 and provides explicit protection in Clause 2(5). This constitutes another one of the 'locks'. The scope of this protection, however, is too narrowly drawn and continues to leave religious organisations at risk of legal challenge under the section 29 of the Equality Act 2010 and under the Equality Act 2010 more broadly if they choose not to 'opt-in' to providing same sex marriages.

(c) The Bill also fails to protect religious organisations from being challenged under the Human Rights Act 1996 and/or by way of judicial review if they fail to opt-in. Such challenges would be costly to religious organisations even if unsuccessful.

(d) The Public Sector Equality Duty may result in religious individuals and organisations being treated unfavourably due to their beliefs on same sex marriage.

CATEGORY 1
Education Act 1996 –
Commending or Advocating Same Sex Marriage

The Concern:

The Bill causes two potential problems for religious schools: first in relation to the current guidance issued by the Secretary of State about marriage, and second in relation to future guidance.

This is because the meaning of marriage will be altered by Clause 11(1) of the Bill which provides that *'In the law of England and Wales, marriage has the same effect in relation to same sex couples as it has in relation to opposite sex couples'* and Clause 11(2) which provides that *'The law of England and Wales (including all England and Wales legislation whenever passed or made) has effect in accordance with subsection (1)'.* Unless legislation provides otherwise, therefore, *'marriage'* will mean both same sex and opposite sex marriage.

This will affect schools because section 403 of the Education Act 1996 places a statutory obligation on the Secretary of State to issue guidance to schools, in order to ensure that children learn about *'the nature of marriage and its <u>importance</u> for family life and the bringing up of children* (emphasis added)*'*. 'Marriage' in that guidance will mean both opposite sex and same sex marriage if the Bill becomes law.

It is the phrase *'its **<u>importance</u>** for family life and the bringing up of children'* that will cause a problem for schools with a designated religious character. That phrase puts an obligation on schools to teach children **more** than the fact that same sex couples can marry according to the law of the land; it requires children to be taught about the *value* or *benefit* of the institution for family life and for children. It requires, in other words, schools to *commend* and *advocate* same sex marriage for family life and the bringing up children, and not just teach pupils that marriage legally includes same sex marriage.

During the Commons Second Reading debate, the Secretary of State said, *"No teacher will be required to promote or endorse views that go against their beliefs"*[1]. The Minister assured the Commons Bill Committee that *"no teacher is under any duty to promote or endorse a particular view of marriage, and neither would they be as a result of any revised guidance in the future"*[2]. Whilst these assurances are welcome, they do not address our concerns.

First, Ministerial statements do not make the law. Our legal advice is that section 403 and the Secretary of States' guidance may be interpreted in a way that obliges schools to commend and advocate same sex marriage. We seek to ensure that Ministerial assurances are firmly placed on the face of the Bill.

Second, the substance of our concern relates to duties on *schools* (not on individual teachers) arising from section 403. The Bill does not provide the necessary protection. Clause 11 will effectively alter guidance that has already been issued by the Secretary of Secretary of State. Consequently schools may be compelled to commend or advocate same sex marriage.

Third, there is nothing in the Bill to protect schools from *future* guidance issued by a future Secretary of State, who might see it as his or her responsibility to issue guidance that specifically requires schools to commend or advocate same sex marriage. The Minister assured the Committee that *"The Secretary of State does not issue guidance to ensure that teachers promote or endorse any particular view of marriage"*[3]; however his words will not have a binding effect on future Secretaries of State.

An amendment is needed in order to ensure that schools with a designated religious character are not compelled to commend or advocate an understanding of marriage that runs contrary to their religious ethos under either current or future guidance.

The Proposed Solution:

New Clause:

To move the following clause–

"[ ] **Amendment of Education Act 1996**

(1) Section 403 of the Education Act 1996 is amended as follows.

(2) After subsection (1C) insert–

(3) After subsection (2) insert–

"(1CA) Guidance under subsection (1A) must provide for education about the nature of marriage and its importance for family life and the bringing up of children to be given to registered pupils at schools which have a religious character in accordance with the tenets of the relevant religion or religious denomination."

"(3) For the purposes of subsection (1CA)–

(a) a school has a religious character if it is designated as a school having such a character by an order made by the Secretary of State under section 69 of the School Standards and Framework Act 1998 ("the 1998 Act"); and

(b) "the relevant religion or religious denomination" means the religion or denomination specified in relation to the school under section 69(4) of the 1998 Act.

(4) Subsection (5) applies where–

(a) Academy arrangements have been entered into between the Secretary of State and another person;

(b) the terms of the Academy arrangements have the effect of requiring that person to have regard to guidance issued under subsection (1A)- above; and

(c) the Academy is designated as having a religious character by an order made by the Secretary of State under section 69, as applied by section 124B, of the 1998 Act or is treated as having been so designated by virtue of section 6(8) of the Academies Act 2010.

(5) Where this subsection applies, subsection (1CA), and guidance issued under subsection (1A), are to be construed as if references to schools which have a religious character were references to the Academy.""

This New Clause will place a positive obligation on the Secretary of State to issue guidance that provides for education to be given to pupils in accordance with the religious character with the school.

It thus ensures that schools with a religious character will not be compelled to commend or advocate same sex marriage if doing so would be contrary to the tenets of the relevant religion. It is important to note that this amendment will not

preclude the Secretary of State from issuing guidance that requires all schools, including schools with a religious character, to teach the legal fact that marriage is open to same sex couples. The amendment is drafted to ensure that schools, whilst teaching pupils that the institution of marriage is legally open to same sex couples, are enabled by the guidance (and not despite the guidance) to provide education about the nature of marriage and its importance for family life and the bringing up of children in accordance with the tenets of the school's religion.

The new clause will, in short, produce a sensible balance that will both protect schools with a religious character whilst ensuring that all pupils are accurately taught the law of the land.

CATEGORY 2

Freedom of Speech for All – Equality Act 2010

There is a significant risk that individuals could be prosecuted under the Public Order Act 1986 or treated adversely as a result of the Equality Act 2010 if they express views adverse to same sex marriage.

a. Civil Action under the Equality Act 2010:

We are concerned that individuals, if they express an opinion about same sex marriage either inside or outside the workplace, will be subjected to some form of detriment because the expression of such views could be viewed as amounting to discrimination. It is imperative that neither freedom of expression, nor the freedom of thought, conscience and religion, is inappropriately limited when individuals are discussing same-sex marriage, whether they do so publicly or privately.

There have already been several cases in which individuals have expressed opinions about same sex relationships – outside work – and have had disciplinary action taken against them as a result. One such case is *Smith v Stafford Housing Trust* [2012] EWHC 3221, in which Mr Smith posted a comment on *Facebook* about same sex marriage, after which his employer demoted him and cut his pay. Even though he was ultimately successful in his legal action against his employer, the damages were minimal, he did not get his original job back, and his wages were not restored to the original amount.

The Secretary of State responded to these concerns in the following way, *"Our clear understanding is that discussion or criticism of same sex marriage would not be 'of itself' discrimination under the current law.… Nothing in the Bill affects people's ability to hold and express their belief that marriage should be between a man and a woman".*

Whilst this statement is welcome, the assurance does not meet our concern and it fails to protect freedom of expression sufficiently. We consider that the Secretary of State is overly optimistic in assuming that courts and tribunals will necessarily reach the same conclusion without further clarification on the face of the Bill.

Existing concerns about liability under the Equality Act, and the consequent chilling effect on freedom of speech, are likely to be exacerbated unless explicit protection is inserted into the Bill.

The Proposed Solution:

New Clause:

Chapter 2 of the Equality Act 2010

(1) In the Equality Act 2010, after section 19, insert the following section –

> *19A For the purposes of this Act the expression by a person of the opinion or belief that marriage is the union of one man with one woman shall not be taken of itself to amount to discrimination against or harassment of another.*

This New Clause makes it clear that discussions and criticisms of same sex marriage do not constitute unlawful discrimination or harassment for the purposes of the Equality Act 2010. The clause thus ensures that individuals will not be dismissed or subjected to disciplinary proceedings by their employers for discrimination or harassment simply for expressing their beliefs. It aims, in short, to protect freedom of expression.

This New Clause is in line with the Secretary of State's assurance and the intention of Government, and it will help to ensure that the intended protection is achieved.

b. Criminal Penalty under the Public Order Act 1986

Unless an amendment is made to the Public Order Act 1986, there is a significant risk that individuals who express a view about same sex marriage could be prosecuted under the Public Order Act 1986.

Individuals should be able reasonably to express views that relate to same sex marriage without fear of prosecution under legislation criminalizing incitement to hatred on grounds of sexual orientation.

The Proposed Solution:

New Clause:

As a proposed amendment to the Marriage (Same Sex Couples) Bill, Schedule 7, Part 2, at end insert –

Public Order Act 1986

42 (1) Section 29JA is amended as follows.

(2) For section 29JA there shall be substituted the following paragraph –

"29JA Protection of freedom of expression (sexual orientation)

In this Part, for the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices <u>or the expression by a person of the opinion or belief that marriage is the union of one man with one woman</u> shall not be taken of itself to be threatening or intended to stir up hatred."

The words underlined would be inserted into the existing protections for freedom of expression in the Public Order Act 1986, in order to protect expressions of belief about marriage from criminal sanctions under the relevant incitement to hatred provisions.

CATEGORY 3
Registrars – Conscientious Objection

a. The Concern:

There is currently nothing in the Bill that will allow a registrar to refrain from conducting *civil* same sex marriage ceremonies on the ground that she or he has a conscientious objection to doing so.

The Bill adopts a *less* tolerant approach to conscientious objection than under the Civil Partnership Act 2004, under which local authorities had the discretion to accommodate civil registrars. This is because under the Bill, local authorities will not have this discretion as regards civil registrars who object to solemnising same sex marriages.

Therefore, registrars currently permitted by local authorities not to conduct civil partnerships will not be accommodated if they object to conducting same sex marriages. Nor will registrars who accepted civil partnerships but do not wish to solemnise same sex marriages, by reason of their religious or other beliefs, be accommodated. Without a conscientious objection clause for registrars there are likely to be legal disputes in the future.

The absence of protection for civil registrars contrasts markedly with the protection from compulsion, which is afforded to clergy or other persons within religious organisations. This is because registrars will not be afforded the protection from compulsion that *clergy* have in relation to same sex marriages *in the religious context*. Such differentiation in treatment cannot be justified.

Allowing individual registrars to exercise a conscientious objection will not defeat the intention of the Bill. We propose an amendment that would be proportionate and workable, because it would operate only in limited circumstances.

The Proposed Solution:

Amendment and New Clause:

As a proposed amendment to the Marriage (Same Sex Couples) Bill, page 3, line 21, clause 2 –

Leave out lines 21 and 22

AND

Insert the following new clause -

"Conscientious objection

(1) Subject to subsections (2) and (3) of this section, no registrar shall be under any duty, whether by contract or by any statutory or other legal requirement, to conduct, be present at, carry out, participate in, or consent to the taking place of, a relevant marriage ceremony to which he has a conscientious objection.

(2) Nothing in subsection (1) shall affect the duty of each registration authority to ensure that there is a sufficient number of relevant marriage registrars for its area to carry out in that area the functions of relevant marriage registrars.

(3) The conscientious objection must be based on a sincerely held religious or other belief.

(4) In any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.".

This Amendment and New Clause will permit all registrars to exercise their right to freedom of thought, conscience and religion. This amendment and new clause will **not** prevent same sex couples from accessing civil or religious marriage ceremonies.

A conscientious objection clause, such the one proposed, is not unprecedented and it will not have a detrimental effect on the Bill. There are numerous well established precedents already on the statute book. The Government has provided no good reason for allowing conscientious objection clauses in those contexts and not in this.

The New Clause partly draws on the conscientious objection clause in the Abortion Act 1967, in requiring (in subsections (3) and (4)) that the objection must be based on a sincerely held religious or other belief, and in placing the burden of proof on the person claiming to rely on it.

Subsection (2) will not allow individuals to exercise a conscientious objection if doing so will result in same sex couples being unable to access this service. If sufficient numbers of registrars are not available in any given area, a registrar in that area with a conscientious objection will come under a duty to conduct the same sex marriage. Therefore, no same sex couple will be prevented from marrying by reason of this amendment. This addresses the (far-fetched) concern that religious individuals might apply for positions as registrars simply in order to prevent same sex couples from getting married[4].

This new clause provides a sensible balance and will ensure that both the rights of same sex couples and registrars with a conscientious objection to conducting same sex marriages are protected.

CATEGORY 4
Inadequacy of the 'locks' – Protection from Compulsion

There are four problems with the protection from compulsion that is provided in the Bill: the first is uncertainty as to the meaning of *'compelled'*; the second is the narrow exemptions from Section 29 of the Equality Act 2010 (which will not protect religious organisations when deciding whether or not to opt-in) and the Equality Act 2010 more broadly; the third is the possibility that religious organisations could be challenged under the Human Rights Act 1996 and/or by way of judicial review if they do not opt-in to providing same sex marriages; and the fourth relates to the public sector equality duty.

a. Meaning of 'Compelled' – The Concern:

Protection from 'compulsion' (in Clause 2(1) and 2(2)) is central to the protection provided for religious individuals and organisations in the Bill – it constitutes one of the quadruple locks that the Government has so widely publicised; however there is no definition of "*compelled*" in the Bill. This creates uncertainty. The protections provided in Clause 2 may thus be quite narrow in scope and provide relatively little protection.

The Minister, during Commons Committee stage, adopted a broad interpretation of what the protection from compulsion involved. He stated that Government intends the protection to extend beyond protection from criminal penalties and have *"the effect of preventing any type of conduct that would have the effect of forcing a person to do something protected under that clause"*[5]*.* The Minister also made it clear that *"imposition of any penalties on or subsequent unfavourable treatment of a religious organisation or individual in order to compel that organisation to opt in to same-sex marriage is already unlawful under the Bill"*[6]*.*

Even if Ministerial assurances could provide sufficient protection (which unfortunately they cannot), the Minister's assurances still leave the position unclear. An organisation penalised for not opting-in by being denied access to grants, for example, would not necessarily be 'compelled' to do anything; it would simply be penalised for not opting-in. Nor is it clear whether a public authority would be acting *ultra vires* were it to treat a religious organisation less favourably on the ground that the religious organisation did not opt-in, even if the public authority's intention was not to 'force' that organisation to opt-in but was simply to show the public authority's disapproval of the religious organisation's stance. It not certain that this would be prohibited by the protection from 'compulsion'. Clarification on the face of the Bill is needed.

Further uncertainty is caused by Clause 2(5) of the Bill which provides separate protection by way an exemption to section 29 of the Equality Act 2010. This throws the scope of the protection from compulsion into question because its presence indicates that Clauses 2(1) and 2(2) alone are not enough to protect religious organisations from legal action under section 29, despite what the Minister said in Committee.

This confusion is further intensified by the fact that, at Report stage in the Commons, the Secretary of State introduced a further amendment providing extra protection for 'persons' for the purposes of section 110 of the Equality Act 2010. What other sections of the Equality Act 2010 does protection from compulsion not cover, and what other pieces of legislation does it not extend to?

Without further clarification on the face of the Bill, the scope of protection may be interpreted very narrowly and the 'lock' may turn out to be not much of a lock at all.

The Proposed Solution:

New Clause:

Meaning of 'compel'

(1) *'For the purposes of this act "compelled" includes, but is not limited to –*

  (a) *less favourable treatment of a person by a public authority, and*
  (b) *the imposition of any criminal or civil penalty*

  as a result of a decision not to opt-in, conduct, be present at, carry out, participate in, or consent to the taking place of, relevant marriages.

(2) *Expressions used in this section have the same meaning as the expressions used in Section 2 of this Act.'.*

This new clause will provide the necessary clarification and thus protect religious organisations from all legal penalties – criminal and civil – if they decide not to opt-in. It will protect religious organisations from unfavourable treatment at the hands of public authorities, by making it clear that public authorities will be acting *ultra vires* if they penalise religious bodies for deciding not to opt-in.

The new clauses will achieve this by providing guidance and clarity on the meaning of 'compelled' and enshrining, on the face of the Bill, the Government's assurance that religious organisations will not be penalised, under any circumstances, for failing to opt-in to the provision of same sex marriages if they object to them. These new clauses and amendments will ensure that the necessary and intended protection is achieved. They are essential if the 'lock' is to be secure.

b. Narrow exemption from Section 29 of the Equality Act 2010:

A second lock provided by the Government is the exemption in Clause 2(5) from section 29 of the Equality Act 2010. This makes it clear that discrimination claims cannot be brought against religious organisations or individuals for refusing to marry same-sex couples or refusing to allow their premises to be used for same sex marriage ceremonies.

The protection, however, is incomplete. Clause 2(5) *only* provides an exception for individuals if they decide not to:

(a) conduct a relevant marriage,
(b) be present at, carry out, or participate in, a relevant marriage, or
(c) consent to a relevant marriage being conducted

(these are Clause 2(2) activities); they do not provide protection for religious *organisations* if they decide not to *opt-in* to providing same sex marriages (which is a Clause 2(1) activity).

Section 29 applies to the exercise of public functions as well as the provision of services. Protection is needed for religious organisations (as well as individuals) because there is a real risk that religious organisations could be held to be exercising a public function when deciding whether or not to opt-in to providing same sex marriages under Clause 2(1).

Religious organisations are also under threat of legal action under the Equality Act 2010 more broadly, on the ground that they could be held to be exercising a public function when deciding whether or not to opt-in under Clause 2(1).

Religious organisations are at risk of being regarded as '*hybrid*' public bodies by reason of the fact that they perform legally recognised marriage ceremonies that involve the performance of a public function. A religious organisation that conducts legally recognised marriage ceremonies could be seen as performing a public function alongside its religious function[7].

This could render a religious organisation's decision not to opt-in to conducting same sex marriages challengeable on the ground that the decision involves a public function. This argument is strengthened by Clause 11(1), which provides that 'In the law of England and Wales, marriage has the same effect in relation to same sex couples as it has in relation to opposite sex couples'. Furthermore, because the discretion to opt-in in Clause 2(1) is a statutory discretion, the likelihood that the decision will be regarded as a public function is increased.

The Minister, during Committee, stated: '*a 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'.* Whilst it is comforting to know that the Government intends the decision to opt-in to be neither a public function nor a service, this view will not be binding on the courts. The risk will remain unless clarification is provided on the face of the Bill.

c. The Human Rights Act 1998 and Judicial Review:

Religious organisations are also under threat of legal action under the Human Rights 1998 and/or by way of judicial review, on the ground that the decision of whether or not to opt-in to under Clause 2(1) involves a public function. Protection and clarification is therefore needed on the face of the Bill for the purposes of the Human Rights Act 1998 and judicial review.

Even if such a challenge would ultimately fail, it would only be after a religious organisation had incurred significant costs defending the challenge. It would not be right to expose religious organisations to such costs. Parliament should provide this clarification now.

The Proposed Solution (for b and c):

New Clause:

Clause 2, page 4, line 13, at end insert—

'(6) For the avoidance of doubt, a person does not exercise a public function for the purposes of the Human Rights Act 1996, the Equality Act 2010, or judicial review, when the person—

(a) refrains from undertaking an opt-in activity, or
(b) undertakes an opt-out activity.'.

This New Clause makes it clear that a religious individual or organisation will not exercise a public function when deciding whether or not to opt-in under Clause 2(1), and thus reduce the risk of legal challenge under the Human Rights Act 1998, the Equality Act 2010, and judicial review.

If the Government does not intend that religious organisations should be held to be performing a public function or providing a public service when opting-in or out, then this New Clause will do no more than ensure that the intention is met. If it is not inserted into the Bill, the matter will remain open to legal dispute

d. The Public Sector Equality Duty:

Section 149 of the Equality Act 2010 places a duty on public authorities, such as local authorities, to have *'due regard'* to the need to *'advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.'* This includes the need to *'remove or minimize disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic'*.

This duty may affect how public bodies, such as school authorities, are required to present material to pupils concerning same sex marriage. According to John Bowers QC, *"This statutory position would in my view make it more difficult for those schools which currently seek to teach about marriage between different sexes (or present it in a positive way) to continue doing so without teaching similarly with regard to same sex marriage"*[8]. This Bill does nothing to prevent this difficulty from arising.

The Bill also appears to do nothing to prevent public authorities from treating a religious organisation adversely because of its decision not to opt-in to same sex marriage, on the basis that section 149 authorises such treatment. It is not at all clear that Clause 2(1) protects religious organisations from such less favourable treatment. If it is necessary to have protection from for section 29 (in Clause 2(5)), then why is protection from section 149 not necessary?

The Proposed Solution:

Amendment:

As a proposed amendment to the Marriage (Same Sex Couples) Bill, after section 2 (5) insert:

"(6) For the purposes of section 149 of the Equality Act 2010, no regard may be had by any public authority to

(a) any decision by a person whether or not to opt-in, conduct, be present at, carry out, participate in, or consent to the taking place of, relevant marriages; or

(b) the expression by a person of the opinion or belief that marriage is the union of one man with one woman. ".

This Amendment makes it clear that less favourable treatment of a 'person' by a local authority, following a decision not to opt-in or the expression of a belief same sex marriage, would be ultra vires.

This amendment would not be contrary to the intention of Government because during Committee, the Minister stated: '*as the law stands, a public authority would in fact be acting unlawfully … if it attempted to treat a religious organisation adversely simply because that organisation refused, as is explicitly allowed in the Bill, to conduct same-sex marriages. If, for example, a local authority withdrew meeting facilities from a Church only because it did not offer same-sex marriage, that would be likely to be unlawful direct religious or belief discrimination.'*[9]

Whilst this assurance is welcome, it is not on the face of the Bill; therefore 'persons' will remain at risk unless this amendment is passed. This amendment provides the necessary protection and ensures that the 'lock' work as intended.

[1] The Rt. Hon. Maria Miller MP, House of Commons (05/02/13)

[2] The Rt. Hon. Hugh Robertson MP, Eighth Sitting (28/02/13)

[3] *ibid*

[4] The Rt. Hon Hugh Robertson MP, Sixth Sitting (26/02/13), *"it is not clear how an authority could be confident that it could meet that duty if any registrar it currently employs and any it might employ in the future could seek to rely on that exemption at any time, regardless of whether they have an objection at the time the Bill is enacted...a registrar could apply for a post that would specifically require them to conduct same-sex marriage ceremonies and then change their mind the week after they started. That would obviously cause all sorts of problems..."*

[5] The Rt. Hon Hugh Robertson MP, Seventh Sitting (29/02/13)

[6] The Rt. Hon Hugh Robertson MP, Seventh Sitting (29/02/13)

[7] Jack Straw, May 1998, when presenting the Human Rights Bill (*Hansard*, House of Commons, 20 May 1998): *"...On the occasions when Churches stand in place of the state, convention rights are relevant to what they do. The two most obvious examples relate to marriages and to the provision of education in Church schools. In both areas, the Churches are engaged, through the actions of the minister or of the governing body of a school, in an activity which is also carried out by the state, and which, if the Churches were not engaged in it, would be carried out directly by the state...."*

"...There was a time when one could get married only in church but, these days, marriage is a matter of civil law—it is the exercise of a public right. The Churches are standing in the stead of the state in arranging the ceremony of marriage, which is recognised not only in canon law, but in civil law. In that instance, the Church is performing a function not only for itself, but for civil society."

[8] John Bowers QC, in his advice to the Coalition for Marriage of the 1st February 2013

[9] The Rt. Hon Hugh Robertson MP, Ninth Sitting (05/03/13)