
A briefing paper for Christians and Churches following the recent changes to the legal definition of marriage in England and Wales

Real marriage – the one defined and ordained by God – is no longer available from the British State in England and Wales, the genuine article having been replaced by a debased imitation. The Marriage (Same Sex Couples) Bill received Royal Assent on 17 July 2013, signalling one of the most significant and far-reaching changes ever to occur in the social structure of life in Britain. The first same-sex marriages are expected to take place in the summer of 2014.

A similar Bill, the Marriage and Civil Partnership (Scotland) Bill is making its way through the Scottish Parliament, and is expected to become law during 2014. There are no current plans to redefine marriage in Northern Ireland.

Still feeling deeply the disappointment and foreboding of this turn of events, evangelical churches and individual Christians will inevitably be considering how in practice to respond to the implications of the new definition of marriage, and the related provisions within the new legislation.

With regard to the conduct of marriages, there are four options which churches can consider:

(a) If a church wants to dissociate itself completely from the State's marriage system, it could decide to de-register its premises, and not carry out any State marriages at all, holding instead a service and ceremony for the couple recognising the marriage as purely a covenant before God. In order still to be married according to law, the couple would need to arrange separately for the legal marriage to take place at the Register Office.

(b) If a church wants to continue to conduct marriages, but to distance itself from the civil processes involved, it could cease to appoint an Authorised Person (AP) to act in a registrar capacity. As the appointment of an AP has never been a legal requirement, the only practical effect of this would be that a civil registrar from the Register Office would have to attend each wedding ceremony, and preside over the signing of the register. The necessary attendance of a civil registrar would involve the payment of a fee by the couple being married.

(c) A church can decide to retain the present registration of its premises for the conduct of marriages. This will enable marriage ceremonies between a man and a woman to continue to be held, and, if the church has appointed one, its AP can continue to fulfil the registrar duties involved. In order to emphasise that in continuing to follow existing procedures the church is not at the same time endorsing the new definition of marriage, it is open to any church to amend the wording of its wedding service to make clear the biblical definition of marriage, and that the State's new definition of marriage is not marriage as ordained by God and as defined in the Scriptures.

(d) A church which is minded to discontinue conducting weddings on its own premises could consider seeking the co-operation of a sympathetic local Anglican church, with a view to a "protected" marriage

ceremony taking place on the premises of the Anglican Church. Since marriages in the Church of England take place under canon law, rather than under English statutory law, the exclusive legal definition of marriage as between a man and a woman continues to operate within the jurisdiction of the Church of England and its courts.¹

The minimum requirement for the wedding of a non-Anglican couple to take place in an Anglican setting, is that it must be conducted on the premises of the Anglican church, and that the Anglican incumbent must preside over the couple's taking of their vows. It would be for the couple being married and the incumbent to negotiate and agree the extent and nature of the involvement of other people in the remainder of the service.

Affinity recognises that, given the variety of circumstances in which they find themselves, churches linked with Affinity may not all choose to follow the same option from the above list. Whichever choice they make, they will be able to seek assistance and advice, from Affinity in the first instance, should they require it.

A great many of the practical concerns which Christians and churches have are connected with the risk of legal action being taken against them for expressing views, and taking action, in connection with their conscientious belief that true marriage can only be between a man and a woman. Some specific protections were included in the original draft of the Act, but most of the attempts in the two Houses of Parliament to strengthen these protections were defeated.

In the following, we have endeavoured to answer as many as possible of the questions which churches and individual Christians are likely to be asking in the light of the new marriage legislation and the circumstances surrounding it.

1 Background questions

[Q1] Mrs Maria Miller said in the House of Commons: "There is no single view on equal marriage from religious organisations. Some are deeply opposed to it; others tell us that they see this as an opportunity to take their faith to a wider community."² Does this mean that Christianity in the UK was divided over the issue of redefining marriage?

[A1] No. Although Mrs Miller's statement did imply that there was a significant diversity of views among the various Christian denominations, this was never the case. The overwhelming majority, not only of Christian churches and denominations, but also of other faith groups, have consistently opposed the redefinition of marriage and will not be applying to conduct same-sex marriages.

The only denominations/religious groups that have indicated that they will be opting in to perform same-sex marriage ceremonies in the UK are the Quakers, the Unitarians, the Metropolitan Community Church and Liberal Judaism. In total these four groups represent fewer than 50,000 people, compared with the many millions of people who belong to the churches in the denominations and groups which will not be opting in.

[Q2] What is the new wording for the definition of marriage?

[A2] Prior to the Marriage (Same Sex Couples) Act 2013 ["the Act"], the definition of marriage in England and Wales was always assumed to be "the voluntary union for life of one man and one woman to the exclusion of all others". This was not a statutory definition, but was derived from a ruling of the Courts of Probate and Divorce in 1866. In practice, however, it had been accepted without challenge as the effective definition of marriage up until the passing of the 2013 Act.

Under the Act, there is still no statutory definition of what marriage is. The Act merely provides for qualifying couples to enter into the legal certificated status of marriage.

A couple will no longer be disqualified if they are not a man and a woman, but they will still need to be of age and mental capacity, a willing party to the marriage, not already married or in a civil partnership, not disqualified by the rules on consanguinity, and the marriage must be intended to be lasting (i.e. not a 'sham' marriage).

[Q3] Was Mr Cameron forced by the European Union ("EU") to bring in legislation to redefine marriage?

[A3] No. The European Court of Human Rights ("ECtHR") had already established that there was no legal requirement, emanating from the EU or anywhere else, for any country to redefine marriage to include same-sex couples.³ In Britain, redefining marriage was a voluntary decision of the government, enacted with the support of the three main political parties.

2 The Christian response to the new legislation

[Q4] I am an independent nonconformist minister. Do I have to perform same-sex marriages?

[A4] No. Section 2(1) of the Act stipulates that no-one who does not wish to conduct same-sex marriages can be compelled to do so.

[Q5] If our church decides to continue to exercise a registrar function is there anything we can do to dissociate our church from the new State view of marriage?

[A5] Yes. A church is free to add a statement to the wording of its Marriage Service declaring that the Bible makes it clear that the only true marriage is between a man and a woman, and that the law of England and Wales, as now expressed by the provisions of the Act, is in conflict with the biblical definition.

[Q6] If our church ceased to appoint an AP, or to perform the civil and legal function within our Marriage Service, could we be sued for not providing these benefits?

[A6] It is not possible to prevent someone taking legal action, but any taken on the basis of [Q6] could not possibly succeed, since a church is neither legally obliged to appoint an AP, nor to register its premises for the conduct of marriages.

[Q7] What should we do as a church when a same-sex couple marries at a civil venue (or one of the few churches who would carry out a ceremony) and then afterwards expects the church to treat them as a married couple?

[A7] A married same-sex couple must be regarded legally and factually as a married couple. A church would want to show them the same personal respect and dignity it would offer to any individuals with whom it came into contact. However, it would also want them to be challenged by the gospel, and it would want to pray for them in whatever way the circumstances required. The church would not be compelled to approve of the relationship. Since the relationship cannot be a marriage in the eyes of God, and the Bible condemns it, it would be perfectly in order, with all due pastoral sensitivity and in the appropriate circumstances, for the church to encourage the parties to separate and divorce.

3 Registration and building issues

[Q8] The trusteeship arrangements applicable to our building are legally complicated, and the trustees are not personally involved in the life of the local church meeting on the premises. Is there a possibility that the trustees could register the premises for same-sex marriages without the knowledge or approval of the local congregation?

[A8] The trustees or proprietors of the premises are the only people who can make an application for the premises to be registered for same-sex marriages. Although the new legislation does not require the trustees to give formal notice to the church of the making of an application, it does require that any application for a licence to conduct the marriages of same-sex couples must be accompanied by the written consent of the “relevant governing authority”. In the case of an independent church, the “relevant governing authority” will be either the church meeting or the church officers, depending on the church’s constitution.

Provided that the local authority staff handling any registration application realise that the trustees are not themselves the “relevant governing authority”, it will therefore not be possible for the premises to be registered over the heads of the local congregation. In the event that the premises are registered without the correct valid authority, there is a cancellation procedure which the local congregation can invoke once it becomes aware of the invalid registration.

The converse also applies. If a local congregation wants to register its premises for same-sex marriages, it can only do so with the consent of the trustees or proprietors, since it is the trustees or proprietors who have to make the application.

[Q9] What if a same-sex couple ask my church to carry out a same-sex wedding ceremony?

[A9] If the church has not opted in to conduct same-sex marriages and its premises have not been licensed for that purpose, then a same-sex wedding ceremony is not legally permitted to be conducted in that building. In those circumstances, it cannot be unlawful to refuse to conduct a same-sex marriage on the premises, since it can never be unlawful to refuse to do something which is itself unlawful. Furthermore, a church whose premises are not registered for same-sex marriages cannot be compelled to register them for this purpose against its will. An amendment to the Bill in the House of Lords tightened up the legislation by providing that no person can be compelled “by any means (including by the enforcement of a contract or a statutory or other legal requirement)” to undertake an opt-in activity. An “opt-in activity” would include making an application for church premises to be registered for the conduct of same-sex marriages [Section 2(1) of the Act].

As a final protection against any future possible maverick attempt to license a church building for same-sex marriages (if, for instance, trusteeship arrangements were to change for some reason), a church may wish to consider incorporating a statement of its doctrine on sexual ethics and marriage into its trust deed or constitution. This would effectively prevent trustees from registering the premises for same-sex marriages, since such a step would then be a breach of trust.

[Q10] What is the position of a church which occupies premises which are shared by more than one church?

[A10] The relevant governing authorities of each of the sharing churches must give separate written consent to the use of the shared building for the solemnisation of marriages of same-sex couples. If one of the churches refuses to give consent, then registration cannot take place, and none of the churches will be able to conduct same-sex weddings on the premises.

[Q11] I am a Christian who owns a civil venue that is registered for marriage ceremonies – should I now de-register and not offer this service?

[A11] Owners of registered civil marriage venues will have to decide whether they wish to continue to make their premises available for marriages now that marriage has legally been extended to same-sex couples. If an owner does wish to maintain his registration, this must be on the basis that he or she will make the premises available for any marriage, whether mixed-sex or same-sex. It would be illegal to refuse the use of the premises for the marriage of a same-sex couple while continuing to allow it for mixed-sex couples. An owner not willing to host same-sex marriages would have no lawful alternative but to surrender the registration.

4 The marriage service and ceremony

[Q12] As we only want to conduct mixed-sex marriages, do we need to re-write our wedding service?

[A12] No, but a church is free to do so if it wishes to add a statement declaring that the Bible makes it clear that the only true marriage is between a man and a woman, and that the law of England and Wales is now in conflict with the biblical definition.

[Q13] Has there been any alteration to the compulsory declaratory and contracting words which the parties to a marriage are required to say during the wedding ceremony?

[A13] No. However, in a male same-sex marriage, both parties will be able to describe themselves as “husband” and in a female same-sex marriage, both parties will be able to describe themselves as “wife.” This does not involve any change to the contracting words. It is stipulated in the Act ⁴ that in all formal legal contexts relating to a marriage, the word “husband” can only be used to describe a man, and the word “wife” can only be used to describe a woman.

5 Risk of legal redress and discrimination

[Q14] What can we do as a church to protect ourselves against any possible legal redress?

[A14] The following steps will provide some protection for churches:

- (a) Ensure that all the officers and members of the church familiarise themselves with the details of the new law and the bureaucratic arrangements which will be put in place to give effect to it; understand the implications of the legal changes; and appreciate their rights under the law;
- (b) Guard against making unwise or uninformed public comment (see also our answer to Q27)
- (c) Many churches are deciding to insert clear statements in their governing documents relating to the church’s biblical doctrinal position on the definition of marriage. Such statements are likely to be acceptable to the Charity Commission (CC) and could be useful when churches face pressure from any other authorities or organisations to justify their practices in relation to marriages.

[Q15] Could I be sued for preaching that marriage is only between one man and one woman?

[A15] No. Preaching that marriage can only be between one man and one woman in line with the church’s teaching is perfectly legal. The government has stated: “The belief that marriage should be between a man and a woman is mainstream and entirely lawful and will continue to be so once same sex marriage becomes lawful.” ⁵

[Q16] Is it lawful for me to express my views about the definition of marriage in other public or private contexts?

[A16] Yes, and it is vital to make it clear to all Christian believers, and to everyone else, that we are all perfectly free to discuss publicly all the issues relating to marriage. We need to emphasise this with unhesitating confidence – otherwise it will create a “chilling effect” in which people begin to assume that certain views cannot be discussed or spoken of. Once this assumption takes root, it increases the risk of complaint, which in turn deepens the chilling effect still further.

With regard to public places, the Act has specifically amended the Public Order Act 1986⁶ to make clear that “any discussion or criticism of marriage which concerns the sex of the parties to marriage shall not be taken *of itself* to be threatening or intended to stir up hatred”. A similar provision already existed in the Public Order Act in relation to the discussion or criticism of sexual conduct. As the above amendment represents a statutory interpretation of the rights established by Articles 9 and 10 of the European

Convention on Human Rights (1950),⁷ the same terminology will in practice apply to other parts of public order legislation applicable to speech in public places. However, a court could still find that the manner in which views are expressed could constitute an offence, since it will still be unlawful under the 1986 Act to act in a way which is “threatening” or “abusive”.

With regard to semi-public contexts, such as a workplace, see the answer to Q20.

With regard to completely private settings, such as a domestic residence, there is no legislation applicable to anything said in such contexts.

[Q17] Local authorities sometimes hire out local authority facilities for use by church groups for services and other activities. Will the availability of these lettings be put at risk, as a result of the views of the church groups being out of sympathy with the new law on marriage?

[A17] No. The response of local authorities and other public bodies should be completely impartial and should not be affected by the new marriage legislation. Some lawyers have argued that certain local authorities with ideological prejudices may attempt to disadvantage churches that refuse to marry same-sex couples, for example, by refusing to let them use publicly-owned buildings. However, the government insists that to do so would constitute indirect discrimination and would therefore be illegal.

“Any policy decision which sought to penalise people or organisations for their religious or philosophical beliefs merely because the public authority disagrees with those views would amount to unlawful discrimination because of religion or belief. As well as being unlawful discrimination, such action would also be vulnerable on traditional administrative law grounds or human rights grounds, as Article 9 of the ECHR guarantees the right to freedom of religion.”⁵

The Public Sector Equality Duty (PSED), a duty introduced by the Equality Act 2010, “cannot be used to justify what would otherwise be unlawful or oppressive action”.⁵

“However, we are aware of the risk that public authorities might misinterpret their responsibilities. That is why we intend to ensure that relevant guidance makes clear that the PSED cannot be used to penalise organisations which oppose same sex marriage.”⁵

[Q18] Will there be problems for churches if they try to hire facilities belonging to private individuals or commercial organisations in the private sector?

[A18] There ought not to be any problem. The Government Equalities Office (GEO) has given assurances that the views of a religious organisation on the definition of marriage are included in the religion and belief category of “protected characteristic” provided for in the Equality Act 2010. This means that it would be unlawful for a private individual or commercial organisation to discriminate against an organisation – for instance, by not allowing the use of premises – because of the user’s views on marriage.⁵

[Q19] We are a new church considering applying for a registration to carry out only heterosexual marriages. Will there be a risk that our application will be refused because we are not also applying to conduct same-sex marriages?

[A19] No. The applications for the two types of registration are entirely separate and cannot lawfully be connected, either procedurally or in the minds of the officers processing an application. In order to be able to apply for either registration, a church’s premises must be registered as a place of worship. In order to apply for its premises to be registered for same-sex marriages, the premises must also be registered for heterosexual marriages. However, the reverse does not apply, and a registration for heterosexual marriages can stand alone.

[Q20] What can I lawfully say in conversation or at work now that the legislation is passed?

[A20] Complete freedom still exists in connection with the expression, in a temperate way, of beliefs and opinions held in respect of the definition of marriage. In the workplace a view expressed in reasonable conversation to a colleague or to anyone else should not lead to any disciplinary action by an employer, as the court's finding in the recent case of Adrian Smith⁸ has shown. The government has promised to issue clear guidance to employers in the light of the Adrian Smith case. An employer would only be justified in taking disciplinary action if the circumstances and nature of the conversation were such as to be detrimental to the performance of the employee's duties.

[Q21] Could personal views expressed by prison, hospital or school chaplains be a disciplinary matter, or could a chaplain be disciplined on a Monday for what he preached in church on a Sunday?

[A21] The Act provides a specific exemption for chaplains who, in the course of their employment, do not wish to be involved in the marriage of same-sex couples. It is thought that this exemption will prove to be helpful more widely in providing some guidance with regard to the expression of beliefs against same-sex marriage which it would be reasonable to expect some chaplains working in the public sector to have.

For instance, it would be unreasonable for a chaplain to have the legal right not to be involved in same-sex marriages, but to have no right to express, in the course of his preaching and pastoral work, his beliefs regarding the definition of marriage. The specific exemption, therefore, has a positive effect in law on a chaplain's Article 9 and 10 rights⁷ for the purposes of interpreting any equality code to which he may be subject.

[Q22] Are the recent statements from Downing Street which claim to offer protection to those who hold to the traditional view of marriage legally binding?

[A22] No. The statements of politicians or Civil Service departments can never be legally binding. However, the assurances the government has been giving refer to the wording of protections which have been incorporated into the Act. If a private individual or organisation, or a public body, fails to provide the protection which an aggrieved body or individual thought the Act provided, and the case goes to court, it will be for the court to decide whether the protections written into the Act apply or not to the particular circumstances of that case.

Any decision of a British court could then be referred to the ECtHR for a final adjudication. Government assurances, and even protections written into the Act, can be regarded as well-intentioned, but they cannot be viewed as completely watertight, since they can be overruled by a court, in Britain or in Europe.

6 Specific provisions of the Act

[Q23] Although we note your answer to [Q13], we have heard that there are circumstances in which the word "husband" can refer to a woman and the word "wife" to a man. In what context is that the case?

[A23] This refers to rights, duties or other provisions applicable to the parties to a marriage contained in legislation in England and Wales which existed prior to the passing of the Act. Under the new Act, some of the rights, duties and other provisions applicable only to a "wife" under the former legislation will under the new legislation be applicable to a "husband" in a male same-sex marriage. However, this gender transposition will only apply to these historic legal provisions. In any new legal provisions and designations, including the wording used in marriage vows, the new Act makes it clear that the word "husband" will only be able to refer to a man, and the word "wife" to a woman.⁴

[Q24] Has adultery been removed as a ground for divorce?

[A24] Adultery will continue to be a ground for divorce in a marriage between two people of the opposite sex, but not in a marriage between same-sex couples.⁹

[Q25] Has the non-consummation of a marriage been removed as a ground for its annulment?

[A25] No. A marriage between two people of the opposite sex can continue to be annulled on the grounds of non-consummation, but there is no annulment provision on this ground for same-sex couples.¹⁰

[Q26] Have there been any changes to the consanguinity rules in connection with a marriage?

[A26] No. The consanguinity rules have not been changed and will apply equally to mixed-sex and same-sex marriages.

7 Responding to the media

[Q27] If the media ask us about our policy, how should we reply?

[A27] If the church has not opted in to conduct same-sex marriages, a church could simply reply that, in common with the overwhelming majority of UK churches, it is not authorised to conduct same-sex marriages. It would be sensible for church leaders to ensure that only authorised officials speak to the press on the church's behalf and that they are competent to articulate their beliefs about the church's understanding of the nature of marriage.

It is also important that in comments to the media and in all other spoken or printed communication, churches show respect to people of all sexual orientations at all times and express their views and biblical truth in a gracious manner, avoiding language that could, for example, be seen as insensitive or offensive.

8 Teachers and schools

[Q28] What will it be compulsory to teach in schools regarding same-sex marriage?

[A28] In the appropriate lessons, schools will be required to explain in a factual way what marriage is under English law, but they will not be obliged to support or promote any particular view about the definition of marriage. What resources are used in teaching about marriage and related subjects, and how the subject is presented, is a matter for the school governors to determine in consultation with the head teacher.

[Q29] What is the position of church schools in respect of what they can teach about marriage?

[A29] The government has made it clear that church schools, or any other schools with a religious ethos, can continue to teach their beliefs about marriage in accordance with the terms of their legal foundations.

[Q30] To what extent can school governors influence what is taught in schools about marriage?

[A30] As school governors are responsible for formulating a school's sex education policy, an individual governor has a significant opportunity to influence the approach taken by the school and to help to ensure that beliefs about traditional marriage are respected. In a church school, a governor can encourage the governors as a whole to make sure that the school does not hold back on the teaching of its core beliefs.

[Q31] Teachers are free to express personal opinions about marriage "in an appropriate context". How will "appropriate context" be defined?

[A31] If pupils ask about the personal beliefs of a teacher, teachers will be free to answer the question. However, there might be concern if a teacher specifically criticised the same-sex marriage of a particular couple bringing up a child who was a pupil at the school, as this might be construed as bullying or harassment. More generally, though, a Christian teacher is free simply to express his or her beliefs.

[Q32] What if a Christian applying for a teaching post is questioned about his or her beliefs about marriage?

[A32] Christians need not fear explaining their belief that marriage is the union of a man and a woman. Recruitment processes are subject to discrimination law and a school found to be unjustly discriminating against Christians would be acting unlawfully.

9 Miscellaneous legal implications

[Q33] Could the new marriage legislation, and a church's opposition to it, affect its charitable status in any way?

[A33] In connection with applications for registration as a charity, or its status as a charity if not required to register, the views of an applicant body regarding the definition of marriage cannot be taken into account by the CC unless the purpose of the charity is directly connected with the definition of marriage. In the latter circumstances, the applicant organisation would only be at risk of being turned down if its intentions are illegal, or if the normal criteria for qualifying as a charity are not met.

In exercising its general responsibilities within the charity sector, the CC has no authority to treat a charity differently or detrimentally on the basis of its views about the definition of marriage.

[Q34] I am connected with a Christian charity set up to help married couples. Now that marriage has been redefined, will we be obliged to offer our services to same-sex couples as well?

[A34] No. If its governing instrument (trust deed) pre-dates the Act, it is obvious that it was set up to offer its services to heterosexual couples only, since at the time it was established, all marriages were heterosexual. In those circumstances the charity will be able to continue to act on behalf of heterosexual couples only, in accordance with the terms of its governing instrument. However, a non-charity or individual acting as a commercial business, and providing similar services, would not be acting lawfully if it provided its services to heterosexual couples only, irrespective of the start-up date of the business. This is because commercial enterprises are legally required to comply with equality legislation. The one exception would be if the services being provided were such that they were only relevant to heterosexual couples.

[Q35] Our church provides marriage preparation classes to couples planning to marry. These are potentially available more widely than just to our own members. If we were asked by a same-sex couple to conduct this class with them, would we be lawfully able to refuse?

[A35] Yes. Religious bodies are excepted from the provisions of equality law which make sexual orientation a "protected characteristic", provided that the ground of their discrimination is "to comply with their doctrine or to avoid conflict with the strongly-held convictions of a significant number of their followers". However, if the sole or main purpose of running the classes is commercial, or if it is being carried out on behalf of a public authority, the exceptions for religious bodies would not apply.

[Q36] What will be the impact of the new marriage law on Christian organisations in respect of their employment policies?

[A36] The new marriage legislation will not change any of the law applicable to employment policies. Such law as there is in connection with employment policies is contained in the provisions of the Equality Act 2010, and no additional restrictions or obligations have been imposed by the new Act. Christian organisations will still be free to discriminate in respect of staff appointments, for instance, in the interests of consistency with their ethos or doctrinal stance. The following extracts from the 2010 Act set out the legal position applicable to organisations with a religious ethos:

"An employer where the employment is for the purposes of an organised religion can lawfully discriminate on the grounds of, amongst others, sex, sexual orientation and marital status provided such requirements are made to enable the employer to comply with the doctrines of the religion in question or to avoid conflicting with the strongly-held religious convictions of the religion's followers. [Schedule 9, paragraph 2]

“A person with an ethos based on religion or belief may lawfully discriminate on the basis of a particular religion or belief if, having regard to the employer’s ethos and to the nature or context of the work it is an occupational requirement and it is proportionate to discriminate in order to meet a legitimate aim.”
[Schedule 9, paragraph 3]

It should be noted that these permitted exclusions rely on churches being able to demonstrate that the restrictions are *necessary* to enable them to comply with their doctrinal position. This is best achieved by the incorporation of the principles involved into the governing documents, or at the very least a formal written statement of policy drawn up by the trustees and governing body of the church.

[Q37] If the Tony and Barrie Drewitt-Barlow case ¹¹ were to go to the ECtHR, would any ruling passed be binding on all EU states?

[A37] It would be binding on all countries which have signed up to the ECHR (1950), which is the basis on which the Court adjudicates on the cases it determines. The signatories are the 47 member countries of the Council of Europe, which is a larger group than the EU. Some of these, such as Britain, have incorporated the Convention’s articles into their own primary legislation. For an ECtHR ruling not to apply to Britain, where the circumstances of the case are applicable, Britain would have both to contract out of the ECHR and repeal the Human Rights Act 1998.

We would like to record our indebtedness to Rod Badams for his work in corresponding with government departments and committees, conceiving, researching and compiling this paper.

Please note:

Although every effort has been made to ensure the accuracy of the information provided in the answers to the questions above, Affinity accepts no legal responsibility for any errors or omissions, nor for any misinterpretations of the information given, nor for any action taken by anyone as a consequence. The text comprises the best information we have, and is presented in good faith, but those making significant decisions should where appropriate seek their own legal advice.

Notes

¹ For instance, Canon B30 of The Canons of the Church of England states: “*The Church of England affirms, according to our Lord’s teaching, that marriage is in its nature a union permanent and lifelong, for better for worse, till death them do part, of one man with one woman, to the exclusion of all others on either side....*”

² Hansard, 5 February 2013, column 125

³ In June 2012, the European Court of Human Rights declared: “The European Convention on Human Rights does not require (EU) member states’ governments to grant same-sex couples access to marriage.”

⁴ Marriage (Same Sex Couples) Act 2013 [Schedule 3, Section 11, Part 2] 5(2)(a) and 5(2)(b)

⁵ Letter of 28 May 2013 from the Government Equalities Office to Affinity

⁶ See Section 29JA Public Order Act 1986 as amended by paragraph 28 of Schedule 7 to the Marriage (Same Sex Couples) Act 2013

⁷ The full text of Articles 9 *Freedom of Thought, Conscience and Religion*, 10 *Freedom of Expression* and 14 *Discrimination* of the ECHR can be viewed at www.hri.org/docs/ECHR50.html

⁸ Adrian Smith is a former housing officer who was disciplined by his employer, Trafford Housing Trust, for posting on his private Facebook page a comment that Parliament’s decision to allow civil partnership ceremonies to be conducted on church premises was “an equality too far”. The case went to the High Court, which found entirely against the Trust, observing that Mr Smith had been “taken to task for doing nothing wrong”.

⁹ Marriage (Same Sex Couples) Act 2013 (Schedule 4, Section 11, Part 3, 3(1) and 3(2))

¹⁰ Marriage (Same Sex Couples) Act 2013 (Schedule 4, Section 11, Part 3, 4(1), 4(2) and 4(3))

¹¹ Tony and Barrie Drewitt-Barlow are a same-sex couple who have indicated their intention to take the Church of England to court on the basis that they are prohibited from being married in a Church of England church. If brought, the case will directly challenge the exclusion of the Church of England from the provisions of the Act.