

Investigating the new legislative environment for same-sex couples

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Legislative changes aimed at increasing social inclusion and reducing discrimination against same-sex couples are having positive impacts, although concerns remain about the form and effectiveness of the legislation, according to qualitative research by the National Centre for Social Research funded by the Economic and Social Research Council.

- This was the first national study to assess how same-sex couples have experienced and viewed the effects of recent legislation which has created a completely new socio-legal environment for same-sex couples.
- The Civil Partnership Act was thought to have had positive impacts on the lives of same-sex couples who had registered their partnerships, with some positive knock-on effects also for couples who had not.
- While the Employment Equality (Sexual Orientation) Regulations were welcomed for offering greater protection from discrimination and harassment in the workplace, employers needed to do more to promote them.
- The Adoption and Children Act was likely to increase the pool of prospective adoptive parents among some same-sex couples but professionals working in the field still needed to improve their understanding of same-sex relationships and families.
- Overall the legislation was broadly welcomed but concerns remained about the continuing inequality between civil partnership and marriage and the potential loss of new and creative aspects of same-sex relationships.
- Greater equality could be created by opening up marriage to same-sex couples and allowing heterosexual couples to enter civil partnerships.

Recent legislative changes have significantly affected the lives of same-sex couples

The research examined the impact of three key pieces of legislation on the lives of same-sex couples:

- the Civil Partnership Act (2004), which, through the creation of the legal status of 'civil partner' (CP), enabled same-sex couples to secure legal recognition of their relationships and a number of specific rights and responsibilities similar to marriage;
- the Employment Equality (Sexual Orientation) Regulations (2003) (EERs), which made it unlawful for employers and other employees to discriminate against people on the basis of their sexual orientation in the workplace;
- the Adoption and Children Act (2002) (A&C), which formally gave lesbian and gay people the right to apply to adopt and to do so as a couple.

We addressed three main issues:

- whether the legislation had increased a sense of social inclusion and reduced discrimination against same-sex couples;
- how same-sex couples felt about state involvement in their lives since the implementation of the legislation (eg, through defining specific family rights and responsibilities);
- how the legislation personally impacted on civil partners and couples who had not yet, or did not intend to, become CPs.

Legislative changes have had both positive and negative impacts on feelings of social inclusion

Collectively, the legislative changes were thought to have had considerable positive impacts on feelings of social inclusion by:

- providing a concrete and visible set of rights that increased a sense of belonging to, and legitimacy in, society;
- signalling the unacceptability of discrimination against same-sex couples and lesbian, gay and bisexual (LGB) parents and employees, providing some with greater confidence about being open about their sexual orientation;
- helping to make same-sex relationship more 'normal' and ordinary, thereby dispelling stereotypes, and reducing the likelihood that same-sex couples would be defined by their sexual orientation alone;
- increasing the sense of security and stability of couples and their families, both through reaffirmation of a couple's relationship, and its greater recognition by families and the wider society.

However, in a number of areas, the legislation was seen as posing a threat to a sense of social inclusion, most notably:

- the deleterious effect on the financial income of some as a result of new rules of assessing the eligibility of same-sex couples for benefits and tax credits – irrespective of CP status;
- a sense among some that civil partnership perpetuated inequality for same-sex couples, through its continuing differences from marriage;
- a fear that by drawing attention to same-sex couples and LGB employees, the legislation might provide some hostile service providers/employers with the opportunity to express their prejudices;
- the view that legislation in itself was not enough to provide full social inclusion and that change in cultural attitudes was also necessary.

State involvement in the lives of same-sex couples has prompted a range of responses

Instead of a single view on the significance of this sort of state involvement in the lives of same-sex couples, four distinct perspectives emerged:

- *State intervention in civil partnership was an unwanted imposition:* from this perspective, the absence of state involvement in the lives of same-sex couples had previously enabled them to create their own definitions and parameters for their relationships and working life, while civil partnership reinforced traditional heterosexual norms and values in terms of relationships.
- *State involvement in same-sex relationships was rejected but welcomed in the sphere of employment law and/or adoption:* according to this view, while the former imposed a set of definitions on pre-existing relationships, the latter had introduced important new rights and outlawed discrimination.
- *The legislation prompted feelings of ambivalence:* these couples felt that, with hindsight, the benefits of greater social recognition and legitimacy outweighed their previous concerns about state involvement in same-sex relationships and argued people could create the kinds of relationship they wanted within the broad legal framework of civil partnership.
- *The legislation was unambiguously welcomed:* those who either regarded themselves as part of the mainstream or considered their partnership no different from traditional heterosexual relationships and marriages unambiguously welcomed the legislation.

The legislation has had a wide range of personal impacts on same-sex couples

IMPACTS OF THE CP ACT

Rights and responsibilities

Gaining access to specific rights and responsibilities (eg, survivor pension rights, formal recognition of next of kin status, ability to apply for parental responsibility) was positively received by CPs, although deemed less important where the couple had already drawn up prior legal arrangements; or where automatic rights assigned to partners overrode the rights of other 'family' members considered to be important (eg, siblings).

Visibility as a couple

Some couples who had felt unable to be open about their relationship with private and public service providers prior to the Act felt more able to be so now. There was little impact on the visibility of couples where they were already 'out' or, less positively, where their fear of discrimination or hostile response in certain contexts remained the same (eg, in specific localities, demonstrating affection in public).

Equality and difference

While some civil partners felt they had gained a similar status in society to married couples, which had increased their sense of validation, they remained angry that civil partnership was not fully equivalent to marriage in all respects. Others felt less sure about the desirability of being equated to married couples, but at the same time recognised the advantages, particularly around social acceptance and legitimacy.

Discrimination

The legislation was felt to have reduced discrimination and the potential for discrimination by giving same-sex couples access to new rights and responsibilities and by signalling that same-sex couples were 'normal' and acceptable. A knock-on effect for some was a greater confidence to stand up against intolerance or discrimination and to assert their rights.

Social recognition by family, friends and state

While becoming CPs had made no difference to some because families already recognised and endorsed the relationship, for others it was seen to have helped validate their relationship in the eyes of family members (eg, their partner achieving higher status in family circles, being more openly discussed and being treated in a more welcoming way). An undesirable effect of the legislation for some who had not entered CPs was that they now felt obliged to explain why not to their families.

Effects on the way people said they were treated by friends were less marked, although there was a sense among some CPs that their new status had provided friends with the opportunity to reaffirm support for the relationship and given them a frame of reference for discussing it.

CPs felt they had gained a strong sense of legitimacy now that they were formally recognised by the state. However, people not in CPs sometimes were concerned that their long-established and sustained commitments could be viewed as less valid as a result of the Act.

Household income

A range of positive financial impacts were said to arise from the CP Act, such as automatic rights for CPs to inheritance, survivor pension rights, ability to benefit from travel insurance as a couple and specific advantages in relation to taxation. The main negative financial impact, discussed by both CPs and non-CPs, was reduction of household income as a result of cohabiting couples being assessed jointly rather than individually for entitlement to means-tested benefits and tax credits.

Although treatment as a couple for benefits purposes sometimes created difficulties for CPs, it was not sufficient to prevent them registering their partnership. Non-CPs were angrier about the loss because they regarded civil partnership as something they had not signed up to.

Commitment, security and stability

Where positive impacts were felt, CPs in both long-term and shorter-term relationships said that their partnership had made them feel more settled and that they had gained feelings of greater comfort and stability.

Negative impacts on commitment were experienced among non-CPs on means-tested benefits who felt that their loss of individual entitlement had put a strain on their relationship.

No impacts occurred where people felt that they had already demonstrated commitment in their relationship through other means such as length of the relationship, commitment ceremonies prior to the CP Act, or shared financial commitments.

IMPACTS FROM THE EERs

Positive impacts attributed to the EERs were the gain of specific employment rights (eg, pension rights, 'paternity' leave, carers leave); increased confidence in demanding such rights; feeling better protected from discrimination and harassment in the workplace; and the view that legislative protection would mean that LGB people could be more open about their sexual orientation at work from the outset.

A significant factor limiting the impact of the EERs where people had experienced discrimination was that some people were unaware of them. Where people were aware of the EERs, they did not pursue their case because of

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the view that sexual orientation discrimination would be hard to prove. There were also concerns that making a complaint would be a difficult and acrimonious process.

Although some employers were already thought to have good equal opportunities policies relating to sexual orientation, there was a strong view that employers should do more to promote awareness and understanding of the regulations.

IMPACTS FROM THE A&C ACT

Where the A&C Act increased the likelihood that same-sex couples would adopt, this was because the couples felt they would be treated more fairly in the adoption process and because it appealed to them that they could apply jointly rather than separately.

The A&C Act had limited or no impact on people's desire to adopt where they did not want children anyway or preferred to have a child by a different route (eg, insemination by donor). There were also concerns that children adopted by same-sex couples might still be exposed to prejudice in society and that same-sex couples would only be placed with 'difficult' children.

Experiences of the adoption process since the implementation of the A&C Act were broadly positive but there were still concerns that same-sex couples had to work harder to show that they were suitable parents and that some courts and professionals still lacked expertise to deal with same-sex couples.

Policy implications

CP Act

Addressing the outstanding feelings of inequality between same-sex and heterosexual couples and the desire for recognition of various forms of commitment could be achieved by introducing same-sex marriage and by opening up civil partnership to opposite-sex couples. Future development of this legislation should consider this.

EERs

While the legislation itself seems broadly right, its effectiveness could be enhanced by increasing awareness of the regulations among employers and by encouraging them to educate their staff about the nature of the regulations.

A&C Act

Professional development of those working in the field of adoption about the likely issues and concerns faced by same-sex parents looking to adopt will be crucial to ensuring that the legislation is a success and that it broadens the pool of potential adopters.

Future legislation

The priority was to allow the current legislation to bed down (rather than introduce additional legislation) and to work in other ways to improve knowledge about, and attitudes towards, same-sex couples (particularly in schools, the media, private institutions and among public service providers).

Methodology

The research was qualitative in design and consisted of 47 in-depth interviews with members of same-sex couples who had been in their relationship for at least two years.

Participants were purposively selected in order to ensure a diverse sample according to partnership status or intentions in relation to civil partnership; gender; age; length of relationship; geographical location; households with and without children; ethnicity; and disability.

Interviews were conducted between June 2007 and January 2008. Interviews were sound recorded and transcribed word for word. Interview data was comprehensively and systematically analysed using the computer-aided qualitative package FrameWork (www.framework-natcen.co.uk).

Obtaining the full report

The full report of these research findings, *Same-sex Couples and the Impact of Legislative Changes* by Martin Mitchell, Sarah Dickens and William O'Connor (2009) was published by NatCen in June 2009. It can be downloaded for free from the NatCen (www.natcen.ac.uk) and ESRC Society Today (www.esrcsocietytoday.ac.uk) websites.

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