



BRIEFING PAPER

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Marriage of same sex couples: Northern Ireland

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Summary

The issue of marriage of same sex couples is highly controversial in Northern Ireland. It is one of the issues on which the parties in Northern Ireland disagree.

Current position

Issues in relation to marriage and civil partnership are devolved. Eligibility to marry differs across the UK.

In Northern Ireland, marriage of same sex couples is not possible. Same sex couples may register a civil partnership, but opposite sex couples may not do so.

In England and Wales, and in Scotland, same sex couples have the option to marry or to register a civil partnership if they wish to gain legal recognition for their relationship.

Campaigners, including human rights and equality bodies, have strongly supported the introduction of legislation for marriage of same sex couples in Northern Ireland.

The DUP and some churches and religious groups are among those who believe that marriage should only be between a man and woman, arguing that civil partnerships are an option for same sex couples.

The Government's stated view has been that, although Parliament could legislate on the issue, any decision to introduce marriage for same sex couples in Northern Ireland should be taken by the Northern Ireland Assembly.

Previous attempts to reform the law in Northern Ireland

In June 2015, the High Court in Belfast granted permission to two same sex couples to seek a judicial review of the ban on marriage of same sex couples in Northern Ireland. The couples argued that the law discriminated against gay and lesbian couples. In August 2017, the Court dismissed the two cases, saying that it was for the Northern Ireland Assembly, and not a judge, to decide social policy.

The Northern Ireland Assembly has voted on five occasions on motions on the marriage of same sex couples. The most recent occasion was on 2 November 2015 when, for the first time, the Assembly voted, by a majority of one, in favour of a motion brought jointly by the SDLP and Sinn Féin, which called on the Executive to table legislation to allow for marriage of same sex couples. However, the motion failed because it did not achieve a cross-community majority: the DUP had presented a "petition of concern", a mechanism which can, effectively, allow a group of at least 30 MLAs to "block" a decision of the Assembly.

Private Members' Bills at Westminster, intended to change the law in Northern Ireland, have not made progress.

Northern Ireland (Executive Formation etc) Act 2019

There has been no fully-functioning Northern Ireland Assembly or Executive since 9 January 2017. The Northern Ireland (Executive Formation) Bill (the Bill) was introduced in the House of Commons on 4 July 2019. Its purpose was to extend the period for Northern Ireland Ministers to be appointed, following the Assembly election held on 2 March 2017, to 21 October 2019; and to impose a duty on the Secretary of State to report on progress towards the formation of an Executive in Northern Ireland.

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A [Commons Library briefing on the Bill](#), prepared for second reading in the House of Commons, provides further information.

The Bill was amended by both Houses of Parliament and became the [Northern Ireland \(Executive Formation etc\) Act 2019](#) (the Act) by Royal Assent on 24 July 2019. It includes section 8, "Same sex marriage and opposite sex civil partnership", which was added during the passage of the Bill through Parliament.

In debates on the Bill, some argued against the entire concept of marriage of same sex couples, and/or that it was for the Northern Ireland Assembly, rather than Westminster, to legislate, if at all, on this issue. Others spoke of this being an equality issue which, in view of the lengthy absence of a functioning Assembly, Westminster must deal with, in order to bring Northern Ireland into line with the rest of the UK. Some also pointed out that there was no longer a sufficient number of MLAs in the Assembly who might use a petition of concern to defeat legislation on the marriage of same sex couples.

Several parties, including Conservatives and Labour, gave a free vote on the issue of marriage of same sex couples. Because of this, John Penrose, who was then Minister for Northern Ireland, said that the Government would not be putting across a principled view, one way or another.

Because the Northern Ireland Executive was not reformed on or before 21 October 2019, Section 8 came into force on 22 October 2019. The section requires the Secretary of State to make regulations, to come into force **on or before 13 January 2020**, to provide that, in Northern Ireland, same sex couples are eligible to marry, and opposite sex couples are eligible to register a civil partnership. The Secretary of State may also make supplementary regulations.

The Government stated its intention to consult on how to allow for religious same sex marriage ceremonies and on the issue of conversion from civil partnership to marriage and vice versa. The Government also said that it planned to have regulations in place providing for civil same sex marriages and opposite sex civil partnerships in Northern Ireland by the date stipulated in the Act.

1. Current position

1.1 Marriage and civil partnership in the UK

Issues in relation to marriage and civil partnership are devolved. Eligibility to marry differs across the UK.

Northern Ireland

The legislation relating to marriage in Northern Ireland is the [Marriage \(Northern Ireland\) Order 2003](#).

Opposite sex couples may marry but marriage of same sex couples is not possible.

Same sex couples may register a civil partnership, but opposite sex couples may not do so.

England and Wales

Same sex couples have the option to marry or to register a civil partnership if they wish to gain legal recognition for their relationship. At present, opposite sex couples may only marry, but this is about to change.

- The [Marriage \(Same Sex Couples\) Act 2013](#) enables same sex couples to marry. It also enables civil partners to convert their partnership to a marriage, if they wish. In England and Wales, the first marriages of same sex couples took place on 29 March 2014. Conversion of civil partnerships to marriage has been possible since 10 December 2014.
- At present, civil partnerships may be registered only by same sex couples. However, regulations to enable opposite sex couples to register a civil partnership came into force on 2 December 2019.¹ Given the usual 28-day notice period, this will enable opposite sex civil partnerships to be registered on 31 December 2019. Another Library briefing paper provides further information: [Civil partnership for opposite sex couples](#).²

Scotland

In Scotland also, same sex couples may marry or register a civil partnership. Opposite sex couples may marry but may not register a civil partnership. The Scottish Government intends to extend eligibility to form a civil partnership to mixed sex couples.³

- The [Marriage and Civil Partnership \(Scotland\) Act 2014](#) enables same sex couples to marry. The first ceremonies took place on 31 December 2014. The legislation has also enabled civil partners to convert their partnership to marriage since 16 December 2014.
- On 30 September 2019, the Scottish Government introduced the [Civil Partnership \(Scotland\) Bill](#) in the Scottish Parliament.⁴

¹ [Civil Partnership \(Opposite-sex Couples\) Regulations 2019](#), SI 2019/1458

² Number CBP08609

³ The Scottish Government now uses the term 'mixed sex' rather than 'opposite sex'

⁴ Progress of the Bill can be followed on the [Bill page on the Scottish Parliament website](#), which also has links to related documents

1.2 How does civil partnership differ from marriage?

The [Civil Partnership Act 2004](#) created a union for same sex couples which is very similar, but not fully identical, to marriage. Civil partners have the same rights and responsibilities as married couples in many areas.

In 2013, the Coalition Government published a [table](#) setting out the similarities and differences between civil partnership and marriage as it applies to same sex couples.⁵

There are also some differences between how marriage applies to opposite sex couples and how marriage and civil partnership apply to same sex couples.

Another Library briefing paper looks how forming a civil partnership affects rights to state, occupational and personal pensions and at the relevant provisions in the Marriage (Same Sex Couples) Act 2013:

[Pensions: civil partnerships and same sex marriages \(CBP03035\)](#).

⁵ [Gov.UK, Department for Culture, Media & Sport, Comparison of Civil Partnership and marriage for same sex couples, 10 December 2013](#) [accessed 7 November 2019]

2. The issue: marriage of same sex couples in Northern Ireland

2.1 Arguments in favour changing the law

In November 2015, in a Northern Ireland Assembly debate, Colum Eastwood (SDLP) made the case for changing the law to allow same sex couples to marry in Northern Ireland:

It is about two people being allowed the opportunity to take part in an institution that I and many other people are allowed to take part in. It should not be the case that we have a barrier to civil marriage just because of people's sexual orientation. If we really want to promote marriage as a positive thing for people to be involved in, we should open it up to all people who wish to make that commitment because of the love that they have for their partner.⁶

Mr Eastwood highlighted how the position differed in other parts of the UK and in the Republic of Ireland:

The difficulty that we have, as Irish citizens on this side of the border, is that we do not have the same rights as people across the island. Equally, people who see themselves as British subjects or citizens do not have the same rights as people in Britain, because, of course, they have taken that step not through a referendum but through the parliamentary process. This is not about being unionist or nationalist, Catholic or Protestant. It is about people understanding that, whatever our political or religious background, we should embrace all the people in our society who want to be embraced and to play their full part in civic life in this part of the world.⁷

Campaigners, including human rights and equality bodies, have strongly supported the introduction of legislation for marriage of same sex couples in Northern Ireland. For example:

- [Love Equality](#) is a campaign led by a consortium of organisations within Northern Ireland who are campaigning for the introduction of civil marriage for same sex couples in Northern Ireland. The consortium's members include Amnesty International Northern Ireland, The Rainbow Project, Irish Congress of Trade Unions Northern Ireland, Here NI, Cara-Friend and NUS-USI.⁸
- On 9 January 2019, (the second anniversary of the collapse of the Assembly and Executive), Amnesty International, Stonewall, the Trades Union Congress and the National Union of Students issued a statement urging the UK Government to legislate for marriage of same sex couples in Northern Ireland.⁹

⁶ [Northern Ireland Assembly, 2 November 2015, p2](#)

⁷ [Northern Ireland Assembly, 2 November 2015, p3](#)

⁸ Love Equality Northern Ireland, [Frequently asked questions](#) [accessed 7 November 2019]

⁹ Amnesty International UK press release, [Northern Ireland: Westminster urged to lift ban on same-sex marriage on anniversary of Stormont collapse](#), 9 January 2019 [accessed 7 November 2019]

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- In June 2018, it was reported that thousands of activists had marched through Belfast to demand an end to the ban on marriage of same sex couples and for reform of the “petition of concern” voting mechanism that blocked a previous attempt to change the law in Northern Ireland.¹⁰
- In October 2015, in advance of a Northern Ireland Assembly debate on the subject, the Equality Commission reiterated its support for the introduction of marriage of same sex couples in Northern Ireland.¹¹

2.2 Arguments against changing the law

In November 2015, Arlene Foster (DUP), who was then Minister of Finance and Personnel, reiterated the arguments against the introduction of marriage for same sex couples, refuting that it was an equality issue.¹²

Mrs Foster spoke of the availability of civil partnership and of the balance this achieved:

Contrary to what has been suggested, the law in Northern Ireland does not disparage or denigrate same-sex relationships, and same-sex couples are not precluded from having a loving, secure, stable and permanent relationship. Specific provision has been made to ensure legal recognition for same-sex relationships, and nothing — nothing — turns on the fact that same-sex couples are referred to as “partners” rather than “spouses”. ...

Put simply, the current law regarding same-sex relationships is operating perfectly well, and the usual drivers for legislative reform do not exist.

(...)

We should be proud of the fact that our law strikes an appropriate balance between the interests of same-sex couples and the interests of people of faith. Those who are truly committed to diversity will see the intrinsic merit in protecting a diverse range of values and beliefs. They will not seek to elevate their own interests above all others, nor will they seek to silence those who may have different views.¹³

The DUP and some churches and religious groups are among those who believe that marriage should only be between a man and woman, arguing that civil partnerships are an option for same-sex couples. For example:

- In July 2019, the Reformed Presbyterian Church issued a statement deploring the passing of the amendments to the

¹⁰ [“Same-sex marriage activists demand removal of petition of concern as 20,000 people take to streets of Belfast”](#) Belfast Telegraph, 2 June 2018 [accessed 7 November 2019]. See section 3.2 of this briefing paper for information about petitions of concern

¹¹ Equality Commission for Northern Ireland press release, [Commission reiterates support for introduction of same sex marriage](#), 29 October 2015 [accessed 7 November 2019]

¹² [Northern Ireland Assembly, 2 November 2015, p15](#)

¹³ [Northern Ireland Assembly, 2 November 2015, pp15-16](#)

Northern Ireland (Executive Formation Etc) Bill relating to both marriage of same sex couples and abortion in Northern Ireland.¹⁴

- In July 2019, “church leaders” and religious groups were reported have expressed “disappointment” following the Westminster vote on the marriage of same sex couples (and abortion law) in Northern Ireland.¹⁵
- In May 2018, Church of Ireland Bishops said there was “little appetite” across the entire island to redefine marriage and that the Church’s stance on marriage of same sex couples remained unchanged.¹⁶
- In April 2014, Catholic bishops in Northern Ireland published an [open letter](#) to all MLAs urging them to reject the forthcoming private members’ motion.

2.3 Opinion polling in Northern Ireland

Opinion polls suggest that the majority of adults living in Northern Ireland support the introduction of same sex marriage.

The Northern Ireland Life and Times Survey (NILT) asked about support for same sex marriage in 2012, 2013 and 2018, posing the question “do you think marriages between same sex couples should or should not be recognised by the law as valid, with the same rights as traditional marriages?”. The proportion of respondents who responded that same sex marriage should be recognised as valid increased over this period. 57% of respondents agreed in 2012, compared with 59% in 2013 and 68% in 2018.

There is evidence for a longer-term shift in attitudes as well. The NILT survey in 2005 found that 35% of respondents agreed with the statement “gay or lesbian couples should have the right to marry one another if they want to”, while 40% disagreed.

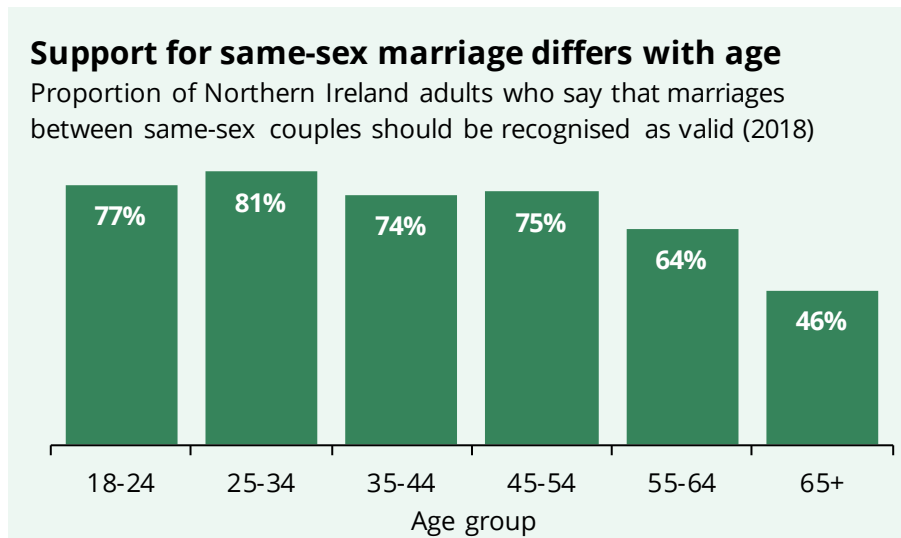
In 2018, 24% of respondents said that same sex marriage should not be recognised as valid and 9% said that they didn’t know. Responses to this question differed depending on the age of the respondent. As the chart below shows, support for recognising same sex marriage was highest in the 25-34 age group in 2018, and lowest in the 65+ age group.

¹⁴ [Reformed Presbyterian Church Statement on same-sex marriage and abortion in Northern Ireland](#), 9 July 2019 [accessed 7 November 2019]

¹⁵ Stephen Gamble, “[Gay marriage and abortion vote: Church leaders express ‘disappointment’](#)”, News Letter, 10 July 2019 [accessed 7 November 2019]

¹⁶ Brett Campbell, “[Church of Ireland stance on same-sex marriage ‘unchanged’](#)”, Belfast Telegraph, 12 May 2018 [accessed 7 November 2019]

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Source: [Northern Ireland Life and Times Survey](#), 2018 results

Notes: Proportions are based on a sample of 1,201 adults in Northern Ireland

Other polling has found similar results. For example, a Sky News poll reported in April 2019 asked, "should gay marriage be legal in Northern Ireland?" and found that 76% of respondents said that it should.¹⁷

¹⁷ Sky News, [How Northern Ireland is still split](#), 10 April 2019 [accessed 7 November 2019]

3. Previous attempts to reform the law in Northern Ireland

3.1 Legal challenge

In June 2015, the High Court in Belfast granted permission to two same sex couples to seek a judicial review of the ban on marriage of same sex couples in Northern Ireland. The couples argued that the law discriminated against gay and lesbian couples.¹⁸

In August 2017, the Court dismissed the two cases, saying that it was for the Northern Ireland Assembly, and not a judge, to decide social policy.¹⁹

3.2 Northern Ireland Assembly

One of the issues on which the parties in Northern Ireland disagree is the marriage of same sex couples.

In [reply](#) to an Assembly Question on 17 September 2012, the then Junior Minister Bell confirmed that, at that time, there were no plans to change the definition of marriage in Northern Ireland, citing a lack of consensus on the issue:

I can confirm that there are no plans to change the definition of marriage in Northern Ireland. To do so, as Members know, would require the agreement of the Executive, and parties on the Executive are hopelessly divided in reaching a position on that. The DUP is very clear that it sees gay marriage as an oxymoron; it sees marriage as being between a man and a woman. The Alliance Party and Sinn Féin are united in their support for gay marriage, and, if you want to hear both sides of the argument, you can ask Mike Nesbitt or Alasdair McDonnell, because, depending on which of their MLAs you speak to, one will agree and another will not.

Petitions of concern

A petition of concern is a notice signed by at least 30 Members and presented to the Speaker signifying concern about any forthcoming matter on which the Assembly is due to vote. The effects of a petition of concern are:

- that the vote on the matter may not be held until at least the day after the petition has been presented; and
- the vote will be on a cross-community basis, rather than simple majority.²⁰

Where there is a petition of concern, a vote will pass only if it is supported by a weighted majority (60%) of members voting, including

¹⁸ Catherine Morrison, "[Gay marriage: Two NI couples win permission to challenge NI ban in court](#)", BBC News Northern Ireland, 26 June 2015 [accessed 7 November 2019]

¹⁹ "[Judge dismisses Northern Ireland same-sex marriage cases](#)", BBC News Northern Ireland, 17 August 2017 [accessed 7 November 2019]

²⁰ Northern Ireland Assembly, [Plenary terms](#) [accessed 7 November 2019]

at least 40% of each of the “designated Nationalists” and “designated Unionists” voting. A petition of concern can be used regardless of subject matter.²¹

Votes against motions on marriage of same sex couples

The Northern Ireland Assembly has voted on five occasions on motions on the marriage of same sex couples.²² Each time, a petition of concern was presented in relation to the motion.

The most recent occasion was on [2 November 2015](#) when, for the first time, the Assembly voted, by a majority of one, in favour of a motion brought jointly by the SDLP and Sinn Féin:

That this Assembly calls on the Executive to table legislation to allow for same-sex marriage.²³

53 MLAs voted in favour of the motion and 52 MLAs voted against it. However, the motion failed because it did not achieve a cross-community majority. The voting was as follows:

Total votes	105	Total Ayes	53 [50.5%]
Nationalist votes	41	Nationalist Ayes	41 [100.0%]
Unionist votes	55	Unionist Ayes	4 [7.3%]
Other votes	9	Other Ayes	8 [88.9%]

The motion was moved by Colum Eastwood (SDLP) who criticised the use of the petition of concern mechanism on this issue:

It is unfortunate that, once again, we are faced with a petition of concern on this issue. The petition of concern was originally created and put into statute as a way of protecting minorities. It was not to give the largest party in this House a veto, and it was not to give the largest party in this House a veto to the detriment of minorities. I think that that is what has been happening with the abuse of the petition of concern.²⁴

Mr Eastwood stressed that the motion was about civil marriage rather than religious marriage:

I want to go back to the point that we very much see the need for protections for Churches. We do not want to impose our view of the world on anybody else. I recognise that this country is on a journey, and many Members in the House are on journeys, which, I think, we will find out as this debate progresses today. The SDLP's position is that this is about civil marriage.²⁵

²¹ See, Gareth Gordon, [Petitions of concern: Is Stormont's safeguard system being abused?](#), BBC News Northern Ireland, 9 July 2013 [accessed 7 November 2019]

²² On 1 October 2012, 29 April 2013, 29 April 2014, 27 April 2015 and 2 November 2015

²³ [Northern Ireland Assembly, 2 November 2015, p2](#)

²⁴ Ibid

²⁵ Ibid

Arlene Foster responded to the debate. She defended the position in Northern Ireland, and did not consider that it was necessary to follow the approach taken in other jurisdictions:

Other jurisdictions are free to determine their own legislative path and to laud their own approach. We have heard the approach of the Republic of Ireland and, indeed, Great Britain being lauded. That is entirely a matter for people if they want to do that, but we are not bound to follow suit. That is what devolution is all about...

I do not for one minute accept the suggestion that, because Northern Ireland has not followed suit and has not followed along as if we do not have our own mind on these matters, we are less enlightened than those jurisdictions that have "extended" marriage to same-sex couples. I place "extended" in inverted commas because, in reality, some of those jurisdictions have essentially repackaged their law on civil partnerships and, consequently, the rights and responsibilities of same-sex spouses are essentially the same as the rights and responsibilities of civil partners.²⁶

Mrs Foster reiterated that she saw no need for legislative change.

3.3 Westminster

Private Members' Bills

Marriage (Same Sex Couples) (Northern Ireland) Bill [HL] 2017-19

On 27 March 2018, Lord Hayward (Conservative) introduced the [Marriage \(Same Sex Couples\) \(Northern Ireland\) Bill \[HL\] 2017-19](#), with the following long title:

A Bill to make provision for the marriage of same sex couples in Northern Ireland, to make provision for the legal recognition of the same sex marriages of armed forces personnel overseas and other same sex marriages solemnised outside Northern Ireland, to make provision in the law of Northern Ireland for the conversion of civil partnerships to marriages, and for the review of civil partnerships, to make provision for rights to pensions and social security contributions for same sex married couples and civil partners, to make provision for gender change by married persons and civil partners, and for connected purposes.

This Bill did not make any further progress.

Marriage (Same Sex Couples) (Northern Ireland) (No.2) Bill 2017-19

On 28 March 2019, Conor McGinn (Labour) introduced the [Marriage \(Same Sex Couples\) \(Northern Ireland\) \(No.2\) Bill 2017-19](#) under the Ten Minute Rule procedure.

Conor McGinn explained why he was introducing the Bill:

I speak in the House today with great pride in the people and cause on whose behalf I bring in this Bill, but also with reluctance and—strange as it might sound—some disappointment. I say that for two reasons. First, this measure is long overdue. Northern Ireland is the anomaly in these islands when it comes to lesbian,

²⁶ [Northern Ireland Assembly, 2 November 2015, p15](#)

gay, bisexual and transgender rights. My constituents in St Helens and people in London, Dublin, Cardiff and Edinburgh can all get married to the person they love, but same-sex couples are denied that basic right in Northern Ireland. That is a wrong that must finally be corrected.

Secondly, this measure should be enacted in the Northern Ireland Assembly. Let me say clearly that that is my strong preference. I know that Members across the House desperately want to see the power-sharing institutions restored at Stormont. However, the Assembly being in cold storage should not mean that Northern Ireland remains a cold house for LGBT rights. The de facto suspension of the devolved legislature does not mean that equality for same-sex couples can be suspended indefinitely, because rights delayed are rights denied.

It is for those reasons that I, Members right across the House and the Love Equality campaign demand that this House, this Parliament and this Government act. My contention is that we can derive a legitimate mandate to do so on this issue, because the people of Northern Ireland and their elected representatives in Stormont have spoken in favour of same-sex marriage. In November 2015, the Northern Ireland Assembly voted in favour of a Bill proposing to introduce same-sex marriage, and every poll of the public in Northern Ireland has shown broad support, with 60% to 70% consistently in favour. Alongside that, the majority of the parties support same-sex marriage. The Alliance party, Sinn Féin, the Social Democratic and Labour party, the Green party and senior figures in the Ulster Unionist party all favour the introduction of equal marriage. They contend that change is needed and that, in the absence of an Assembly, Westminster must act.²⁷

This Bill did not make any further progress.

Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill 2017-19

The Civil Partnerships, Marriages and Deaths (Registration Etc.) Act 2019 began as a Private Member's Bill introduced by Tim Loughton (Conservative).

At Lords Committee stage on 1 February 2019,²⁸ and at Report stage on 1 March 2019,²⁹ Lord Hayward (Conservative) moved an amendment intended to require the Secretary of State to make regulations to change the law relating to marriage in Northern Ireland to provide that marriage between same sex couples is lawful. Lord Hayward called for progress on the issue.

Home Office Minister and Parliamentary Under Secretary of State (Minister for Equalities), Baroness Williams of Trafford, said that she could not support the amendment and that it was a matter for the Administration in Northern Ireland.

Following debate, Lord Hayward withdrew the amendments.

²⁷ [HC Deb 28 March 2018 c790](#)

²⁸ [HL Deb 1 February cc1288-1318](#)

²⁹ [HL Deb 1 March 2019 cc397-414](#)

Parliamentary questions

In short, the Government's stated view has been that any decision to introduce marriage for same sex couples in Northern Ireland should be taken by the Northern Ireland Assembly. In May 2019, this was restated by Karen Bradley, then Secretary of State for Northern Ireland, in answer to a Parliamentary question:

As I have said on many occasions, I voted in support of same sex marriage in England and Wales and I hope that this can be extended to Northern Ireland in the future.

However, marriage is a devolved matter in Northern Ireland and an issue I want a restored Executive to resolve.³⁰

On 20 February 2018, Karen Bradley confirmed that Parliament could legislate for equal marriage in Northern Ireland:

In accordance with the Belfast Agreement, this is a devolved matter which should be addressed in the NI Assembly; but the power of the Westminster Parliament to legislate remains unaffected. If this issue were to be raised in Westminster, the Government's policy is to allow a free vote on matters of conscience such as equal marriage.³¹

³⁰ [PQ 910962 \[on Marriage \(Same Sex Couples\) Act 2013: Northern Ireland\], 22 May 2019](#)

³¹ [PQ 127415 \[on Marriage: Northern Ireland\], 20 February 2018](#)

4. Northern Ireland (Executive Formation etc) Act 2019

4.1 Background

There has been no fully-functioning Northern Ireland Assembly or Executive since 9 January 2017, when the then Deputy First Minister, the late Martin McGuinness, resigned. Under Northern Ireland's power-sharing arrangements, this also resulted in the First Minister, Arlene Foster, ceasing to hold office.

Information about what has happened since then is provided in:

- Commons Library briefing paper, [Northern Ireland \(Executive Formation\) Bill 2017-19](#) (section 2);³²
- [Northern Ireland \(Executive Formation\) Bill Revised Explanatory Notes](#).³³

4.2 The Northern Ireland (Executive Formation) Bill 2017-19

The Northern Ireland (Executive Formation) Bill (the Bill) was introduced in the House of Commons on 4 July 2019 as Bill 417 of 2017-19.

As originally introduced, the purpose of the Bill was quite narrow. Its purpose (among other things) was to:

- amend section 1 of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 to extend the period provided in the Northern Ireland Act 1998 for Northern Ireland Ministers to be appointed, following the Assembly election held on 2 March 2017, to 21 October 2019; and
- to impose a duty on the Secretary of State to report on progress towards the formation of an Executive in Northern Ireland.

A [Commons Library briefing on the Bill](#), prepared for second reading in the House of Commons, provides further information.³⁴

The Bill was amended by both Houses of Parliament.

Dates for all stages of the passage of the Bill, including links to the debates, are available on the [Bill page on the Parliament website](#).

4.3 Section 8: Same sex marriage and opposite sex civil partnership

The [Northern Ireland \(Executive Formation etc\) Act 2019](#) (the Act) received Royal Assent on 24 July 2019. It includes section 8, Same sex marriage and opposite sex civil partnership, which was added during the passage of the bill through Parliament.

³² CBP 8607, 4 July 2019

³³ Bill 417—EN

³⁴ CBP 8607, 4 July 2019

Section 8 requires the Secretary of State to make regulations, to come into force **on or before 13 January 2020**, to provide that, in Northern Ireland, same sex couples are eligible to marry, and opposite sex couples are eligible to register a civil partnership. The Secretary of State may also make supplementary regulations. The regulations are subject to the negative resolution procedure.³⁵

[Section 8](#) is set out in full below:

(1) The Secretary of State must, by regulations, make provision so that—

- (a) two persons who are of the same sex are eligible to marry in Northern Ireland, and
- (b) two persons who are not of the same sex are eligible to form a civil partnership in Northern Ireland,

provided that, apart from the question of sex, they would be eligible to marry or form a civil partnership (as the case may be).

(2) Regulations under subsection (1) must be made so as to come into force on or before 13 January 2020 (but this does not in any way limit the re-exercise of the power).

(3) The Secretary of State may, by regulations, make any other provision that appears to the Secretary of State to be appropriate in view of—

- (a) the extension of eligibility to marry in Northern Ireland to persons of the same sex, and
- (b) the extension of eligibility to form civil partnerships in Northern Ireland to persons who are not of the same sex.

(4) Regulations under subsection (3) may, in particular, make provision about—

- (a) parenthood and parental responsibility of parties to a marriage or civil partnership;
- (b) the application by a party to a marriage or civil partnership for a gender recognition certificate under the Gender Recognition Act 2004, or the issuing of such a certificate, and the consequences of that application or issuing for the marriage or civil partnership;
- (c) the financial consequences of marriage or civil partnership (for example, in relation to pensions or social security);
- (d) the treatment under the law of Northern Ireland of marriages, civil partnerships or relationships similar to civil partnerships formed outside of Northern Ireland.

(5) The Secretary of State may, by regulations, make provision for and in connection with a right to—

- (a) convert a marriage into a civil partnership;
- (b) convert a civil partnership into a marriage.

Such regulations may, in particular, make provision equivalent or similar to that contained in or authorised by section 9 of the Marriage (Same Sex Couples) Act 2013.

³⁵ A statutory instrument laid under the negative procedure becomes law on the day the Minister signs it and automatically remains law unless a motion – or ‘prayer’ – to reject it is agreed by either House within 40 sitting days.

(6) The Secretary of State may, by regulations, make any provision that the Secretary of State considers appropriate in order to protect the ability to act in accordance with religious or other belief or opinion in relation to marriage or civil partnership (including the conversion of marriage into civil partnership and vice versa).

(7) Regulations under this section—

- (a) may make provision for fees to be payable;
- (b) may make provision conferring a discretion on a person;
- (c) may make provision enabling a person to make regulations (and such regulations may make provision for fees to be payable);
- (d) may include provision amending, repealing or revoking any provision made by an Act of Parliament or Northern Ireland legislation;
- (e) may, in so far as made in reliance on section 11(2), include provision amending or repealing provision made by an Act or Measure of the National Assembly for Wales or an Act of the Scottish Parliament.

(8) In this section—

- (a) references to marriage in Northern Ireland (however expressed) include references to marriage outside of the United Kingdom by virtue of eligibility to marry in Northern Ireland (in accordance with Part 1 or Part 3 of Schedule 6 to the Marriage (Same Sex Couples) Act 2013);
- (b) references to forming a civil partnership in Northern Ireland include references to registering as civil partners outside the United Kingdom by virtue of eligibility to do so in Northern Ireland (in accordance with section 210(2)(b) or 211(2)(b) of the Civil Partnership Act 2004).

4.4 Implementation of section 8

Section 13 of the Act provides for section 8 to come into force on 22 October 2019 unless an Executive in Northern Ireland had been formed on or before 21 October 2019, in which case the section would not come into force at all. The Executive was not formed by the specified date and so section 8 has now come into force.

4.5 Debate on the clause which became section 8

As originally introduced in the House of Commons on 4 July 2019, the Bill did not include any provision relating to the marriage of same sex couples.³⁶ The Bill was amended twice on this issue: at Commons Committee stage and at Lords Report stage.

Overview

In debates on the Bill, some argued against the entire concept of marriage of same sex couples, and/or that it was for the Northern Ireland Assembly, rather than Westminster, to legislate, if at all, on this

³⁶ [Bill 417 of 2017-19](#)

issue. Others spoke of this being an equality issue which, in view of the lengthy absence of a functioning Assembly, Westminster must deal with, in order to bring Northern Ireland into line with the rest of the UK. Some also pointed out that there was no longer a sufficient number of MLAs in the Assembly who might use a petition of concern to defeat legislation on marriage of same sex couples.

The Government recognised the strength of feeling on the issue, shown by the size of the majority in the Commons voting in favour of providing for the introduction of marriage for same sex couples (383 votes to 73).

Several parties, including Conservatives and Labour, gave a free vote on the issue of marriage of same sex couples. Because of this, John Penrose, who was then Minister for Northern Ireland, said that the Government would not be putting across a principled view, one way or another.³⁷

Further detail is set out below.

Commons Committee stage

On 9 July 2019, at Commons Committee stage, Conor McGinn (Labour) moved a new clause (New Clause 1) intended to require the UK Government, by no later than 21 October 2019, to make and bring into force regulations to enable same sex couples to marry in Northern Ireland. Any such regulations were to cease to have effect if a Northern Ireland Executive was formed by 21 October 2019.

Conor McGinn set out the following rationale for the clause:

There is an ongoing talks process at Stormont. Two and a half years since the Assembly and Executive collapsed, we are still waiting on that to come to a successful fruition. As I said last night at Second Reading, these issues are difficult and complicated, and politicians in Northern Ireland have my respect and full support in trying to resolve those; but if, in three months' time, they—along with the two Governments—have not been able to ensure that a fully functioning Executive and Assembly are back up and running, we should legislate here for equal marriage. In the event that they are up and running before then, this provision would not be enacted. In the event that the Stormont Executive and Assembly are up and running after we enact this measure here, of course the power to legislate on marriage remains with the Stormont Executive and Assembly, and they could seek to change or overrule the regulation that we have made here.³⁸

Conor McGinn said that the clause respected the devolution settlement by stating that the power to introduce marriage for same sex couples remained with the Assembly:

As I have said, it is my strong view that, given the way the new clause is crafted ... it does not impinge upon the devolved settlement; it explicitly recognises that this is a devolved power. At the minute, however, the Assembly and the Executive exist in the ether, or as a concept, not in reality, so if they cannot make this

³⁷ [HC Deb 9 July 2019 c222](#)

³⁸ [HC Deb 9 July 2019 c165](#)

law, we will make it here, because, as I have said often, rights delayed are rights denied. We will make the law here, and then when the Assembly is back up and running, the power remains its to change it.³⁹

Ian Paisley (DUP) disagreed with the proposal:

... this completely and totally usurps the role of the Northern Ireland Assembly. It does drive a coach and horses through the issues. There is not sufficient time between now and 21 October to establish a new Executive that would be able to function on these matters by that date.⁴⁰

Nick Herbert (Conservative) was among those who supported the new clause:

It is anomalous, as has been said already in this debate, that citizens in one part of the United Kingdom cannot avail themselves of something that many people regard to be a fundamental right: to be able to enter into a marriage with the person they love.⁴¹

He argued that, in the absence of a functioning Assembly, Westminster should legislate on the issue:

Two arguments therefore have to be addressed. The first is that, in spite of it being the right thing to do, the UK Parliament should refrain from making such provision because it should be a devolved matter. The problem is that we do not have a functioning Executive in Northern Ireland. We have not had devolved government for some time, and ...we might not have it for some time going forward. Meanwhile, there are couples in Northern Ireland who do not enjoy the same rights as those in the rest of the United Kingdom. They wish to get married but are legally prevented from doing so. How much longer will they have to wait?

Nick Herbert said that there was precedent for the proposal in new clause 1: "when the Assembly was suspended in 2004, this House passed the Civil Partnership Act 2004 to extend civil partnerships to Northern Ireland".

Sammy Wilson (DUP) (among others) considered that it was not appropriate to consider issues such as the marriage of same sex couples in the context of the Bill:

I do not intend to enter into arguments about whether we should have same-sex marriage in Northern Ireland or whether there should be a change in the law relating to abortion. I have totally different views from those expressed in the Chamber today, but that is not what the debate on the Bill ought to have been about in the first place. This debate is about the narrow issues in the Bill. The other issues that have been introduced have been introduced in a way that does not do justice to this House; that creates great dangers in Northern Ireland, especially when there is a sensitive talks process going on; and indeed, that angers many people in

³⁹ [HC Deb 9 July 2019 c166](#)

⁴⁰ [HC Deb 9 July 2019 c167](#)

⁴¹ [HC Deb 9 July 2019 c177](#)

Northern Ireland whose views will be ignored if the amendments are passed today.⁴²

Jim Shannon (DUP) agreed that “the devolved Assembly is the place for this decision”.⁴³

John Penrose, who was then Minister for Northern Ireland, agreed that the marriage of same sex couples, and other matters which had been debated, were devolved issues which “should rightly be the responsibility of the Northern Ireland Assembly”. He said that, while Parliament retained its sovereignty in relation to these areas, “we must tread extremely carefully”. However, he acknowledged the effect of the Northern Ireland Assembly not sitting for more than two years:

That is a source of huge frustration not only to those of us here today, but to people in Northern Ireland and the country at large. That frustration is starting to boil over. Patience is wearing thin, and people are increasingly unwilling to wait much longer.⁴⁴

John Penrose recognised that, in relation to marriage of same sex couples, “there are fiercely held and strongly principled views on both sides of the issue”, but he also noted the significance of proposed new clause 1:

Whether we are in favour of or against same-sex marriage, and whether we believe that devolution should trump human rights, or that human rights should trump devolution, I hope that we can all agree that this is a significant legislative proposal, in terms of its importance and complexity, and that therefore it must not be delivered without careful consideration and analysis of whether we are getting it right.

The Minister issued a technical warning that the changes envisaged by new clause 1 were probably not achievable by October:

Although I appreciate and sympathise with what the hon. Member for St Helens North is trying to achieve, I must at the same time issue a note of warning to anybody considering voting for it. It is a technical note of warning, rather than one of principle, because the principles have been debated extensively during our discussions this afternoon—because this is a free-vote issue, the Government will not be putting across a principled view, one way or another. The technical point, which needs to be made to ensure that everyone is aware, is that, due to the current drafting of new clause 1, the changes that would need to occur before the first same-sex couple could legally marry in Northern Ireland are probably not achievable, just as a practical matter, by October. There are many policy questions to be worked through that have not yet been properly considered for the Northern Ireland-specific context, which might require a different response from the one in England, Wales and Scotland.

That applies to matters such as pensions, the conversion of civil partnerships, gender recognition—we have heard many of those points made in contributions this afternoon—protecting the rights to freedom of religion and expression, and allowing religious institutions via opt-in, rather than compelling them, to engage in and perform same-sex marriage ceremonies. I would issue a

⁴² [HC Deb 9 July 2019 c190](#)

⁴³ [HC Deb 9 July 2019 c212](#)

⁴⁴ [HC Deb 9 July 2019 c220](#)

technical warning to colleagues who are considering supporting the new clause in principle. Whether Members agree with it or not, and however they balance the competing claims of devolution and broader human rights, they should bear in mind the fact that it may need substantial further work before it can achieve its intended effect.⁴⁵

The House voted in favour of New Clause 1 by 383 votes to 73.

Lords Committee stage

New Clause 1, added at Commons Committee stage, became Clause 8 in the Bill presented in the Lords on 9 July 2019.⁴⁶

At Lords Committee stage, on 15 July 2019, Lord Morrow (DUP) moved Amendment 17, the main purpose of which, he said was to ensure safeguards:

My Lords, the main purpose of this amendment, ...is simply to ensure that there will be no fewer safeguards for free speech and religious liberty in Northern Ireland after same-sex marriage is introduced than there are here in England and Wales. I genuinely fear, and I believe it is a reasonable fear, that Northern Ireland will be poorly served in the protections given unless we make this amendment.⁴⁷

Lord Morrow spoke of the effect of changing the law by regulations:

The extension of marriage in England and Wales was done by primary legislation, after many hours of debate in this House and the other place. For Northern Ireland, it will be done through regulations, which are not designed for highly controversial, sensitive and divisive subjects of this kind. They do not receive the level of scrutiny that this issue should. As all noble Lords know, there is no opportunity to amend regulations. Therefore, the regulations must contain adequate protections from the start. There was a public consultation on this issue in England and Wales before the legislation was even introduced. That consultation process raised areas of concern, such as religious liberty. These could then be given safeguards in the legislation and included in the scrutiny received in Parliament.

It seems that there will be no consultation before the Secretary of State is required to exercise this power. There is no time. There has never been a consultation on this issue in Northern Ireland, so the people of Northern Ireland are already being poorly treated.

Lord Morrow considered it to be essential that “the necessary protections for religious liberty are in place”. The amendment was also intended to “protect the freedom to disagree”.

In response, junior Northern Ireland Minister, Lord Duncan of Springbank, acknowledged the need for protections of freedom of religion and freedom of expression and said, “I hope to see those protections coming through in an emerging amendment”.⁴⁸

Lord Morrow withdrew his amendment.

⁴⁵ [HC Deb 9 July 2019 cc221-2](#)

⁴⁶ [HL Bill 190 of 2017-19](#)

⁴⁷ [HL Deb 15 July 2019 c104](#)

⁴⁸ [HL Deb 15 July 2019 c111](#)

Lords Report stage

Report stage in the Lords was on 17 July 2019.

Lord Hayward (Conservative) moved Amendment 11, intended to replace **all** the provisions of Clause 8 (Marriage of same-sex couples in Northern Ireland) with new provisions. Lord Hayward also spoke to two further amendments. He said that the purpose of the amendments, tabled with other Members, was “to improve and extend the drafting of Clause 8” and that this would “enable the Secretary of State to deliver a comprehensive and effective regime for same-sex marriage in Northern Ireland”.⁴⁹ The amendments also dealt with allowing the Secretary of State to introduce opposite sex civil partnerships in Northern Ireland.

The date on which regulations were to be in force had changed. Lord Hayward provided the following detail (emphasis **in bold** added):

New subsection (1) enables the Secretary of State, by regulations, to extend eligibility so that two people of the same sex may marry in Northern Ireland and two people not of the same sex may form a civil partnership. ...

New subsection (2) requires that the first regulations under new subsection (1) come into force on or before

13 January 2020. The combined effect of the amendments is that **Clause 8 itself would come into force on 22 October, unless the Northern Ireland Executive is reformed on or before 21 October,** and the regulations on same-sex marriage and civil partnerships would follow early next year. Pushing back the commencement date for these regulations would allow the Government and the Northern Ireland Civil Service more time to make the necessary changes to legislation, as well as the essential operational changes. I understand that any less time than this would jeopardise the Government’s ability to extend the full set of rights and entitlements to both same-sex married couples and opposite-sex civil partners.

Our amendments would also allow for other necessary amendments to be made by regulations. New subsection (4) outlines the areas about which the regulations may make particular provision. These include: matters relating to parenthood and parental responsibility; the financial consequences of marriage and civil partnership, which may include pensions and survivor benefits; and the recognition of equivalent same-sex marriages and opposite-sex civil partnerships entered into in Great Britain and overseas as marriage and civil partnerships in Northern Ireland. I stress that this list is not exhaustive but is intended to give a clear indication of how the powers in new subsection (3) are likely to be used and the numerous other changes that will be needed as a consequence of the extension of marriage and civil partnerships.

New subsection (5) enables the Secretary of State to make regulations governing conversion rights. The Marriage (Same Sex Couples) Act 2013 allows same-sex civil partners in England and Wales to convert their civil partnerships into marriage, without first having to dissolve the partnership. The Government are now consulting on whether opposite-sex married couples in England and Wales should similarly have the opportunity to convert to a

⁴⁹ [HL Deb 17 July 2019 c272](#)

civil partnership. New subsection (5) would allow for both eventualities in Northern Ireland.

New subsection (6) enables the Secretary of State to make regulations that protect the ability to act in accordance with religious belief in relation to same-sex marriage, opposite-sex civil partnerships and conversion between marriage and civil partnership and vice versa. I am conscious that this is a particularly sensitive issue in Northern Ireland. Noble Lords may be familiar with provisions of the 2013 Act, known as the quadruple lock, which we have debated in this House on many occasions. Essentially, the quad lock ensures that no religious organisation or individual minister can be compelled to marry same-sex couples or to permit that to happen on their premises. The 2013 Act also provides an opt-in system for religious organisations that wish to conduct marriages of same-sex couples and ensures that no discrimination claim can be brought against religious groups or individual ministers who refuse to marry couples because they are of the same sex. The Government have noted that they intend to extend similar protections to civil partnerships on religious premises in England and Wales.

(...)

Northern Ireland also has constitutional protection against discrimination on the grounds of political opinion. The power in subsection (6) is therefore drafted in a way that enables appropriate protections to be crafted to fit the particular conditions in Northern Ireland, although I understand that they are likely to be broadly the same as those applicable in England and Wales and in Scotland. I hope that that reassures noble Lords that no religious organisations nor individual ministers will be compelled to conduct same-sex marriages or opposite-sex civil partnerships in Northern Ireland against their will.⁵⁰

Regulations made under Clause 8 would be made by statutory instrument and subject to the negative resolution procedure.

Baroness Smith of Basildon, Shadow Spokesperson for Northern Ireland, referred to Lord Hayward's amendments as "tidying up" the Commons amendment:

In time-honoured way, what has fallen to your Lordships' House is to tidy up the amendment that came to us, dealing with any technical deficiencies and the details and definitions. I am grateful to the noble Lord, Lord Hayward, Conor McGinn in the other place, and others who have worked on this.

... The changes required are those that bring it in line with current England and Wales legislation and deal with the practicalities of when it can be delivered.

(...)

Extending the period in the legislation will give Ministers and their officials time for a little breathing space to engage with relevant stakeholders and get to grips with those issues. That is the right way forward.⁵¹

⁵⁰ [HL Deb 17 July 2019 cc273-4](#)

⁵¹ [HL Deb 17 July 2019 cc285-6](#)

Lord Duncan of Springbank also referred to Amendment 11 as addressing “the technical deficiencies in the initial amendment from the other place”.⁵² He addressed a point made by Lord Morrow about protecting religious freedom:

The noble Lord, Lord Morrow, raised the issue of religious protection and religious freedom. He is right to do so, because there needs to be an understanding among all faith-based groups in Northern Ireland that they will not be compelled to act against their faith, their religion or even their opinion.

However, I come back to how we seek to move this forward. The question centred around the words “may” and “must”. I need to drill down into that to make sure this is fully understood. The words “may” and “must” are not about the protections or the fundamental realisation of them. Article 9 of the European Convention on Human Rights guarantees the right to freedom of religion and freedom of conscience. That is not in doubt, not debated and not disputed, and will not be in any way eroded by anything we do here today—full stop. It is important to remember that all the legislation will comply with that and ensure we move that forward. Absolutely at the heart of this must be a belief in Northern Ireland that faith-based groups will not experience some sort of prejudice because they express their faith in fashions which do not recognise the situation today.

Lord Duncan stressed that he did not have any concerns with Amendment 11 although the dates it included would be challenging, adding:

...but we will meet those deadlines, by hook or by crook. I apologise to the officials who we will look to for this, but I am making that commitment.⁵³

Amendment 11 was agreed.

4.6 What will happen next?

On 21 October 2019, Julian Smith, Secretary of State for Northern Ireland, made a statement to the House in which he outlined how the Government would proceed, including consultation in two areas:

On same-sex marriage and opposite-sex civil partnerships, regulations are to be made no later than 13 January 2020. There are two key areas on which we will consult: how to allow for religious same-sex marriage ceremonies; and the issue of conversion from civil partnership to marriage and vice versa. So that we can tailor the regulations appropriately, there will be a short consultation on these two issues before we introduce religious same-sex marriage in Northern Ireland. This will not detract from the regulations by 13 January 2020, providing for civil same-sex marriages and opposite-sex civil partnerships. The first civil same-sex marriages will take place in the week of Valentine’s day 2020.⁵⁴

⁵² [HL Deb 17 July 2019 c286](#)

⁵³ [HL Deb 17 July 2019 c287](#)

⁵⁴ [HC Deb 21 October 2019 c721](#)

26 Marriage of same sex couples: Northern Ireland

On 24 October 2019, the Government stated that, given the Northern Ireland Executive was not restored by 21 October 2019, it had a legal duty to comply with section 8 of the Northern Ireland (Executive Formation etc.) Act 2019. The Government said it planned to have regulations in place on same sex marriage and opposite sex civil partnership in Northern Ireland by the date stipulated in the Act.⁵⁵

⁵⁵ [PQ 1097 \[on Abortion and Marriage: Northern Ireland\], 24 October 2019](#)

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