LEGAL RECOGNITION OF HUMANIST MARRIAGES IN ENGLAND AND WALES

Briefing from Humanists UK, January 2022

WHAT'S HAPPENING?

On 20 December the Government announced that it will indefinitely extend legal recognition to outdoor civil marriages – making permanent time-limited reforms that had been introduced in June – and will also introduce outdoor religious marriages soon. These reforms are happening outside of the current wholesale marriage law reform process, which is expected to run for several years.

But this announcement undermines the arguments the Government has been using against legal recognition of humanist marriages, which were made on the basis of opposing any piecemeal reform to marriage law. It raises the question as to why humanist couples can't have a similar reform – even if only on an interim basis, pending the wholesale reform – which can simply be made by regulations. Further, outdoor weddings reform is the precise change the Government was concerned that would be unfair if it were to happen for humanist marriages in isolation. But now they're doing it for other marriages, which surely removes the reason why they can't also do it for humanist marriages.

ABOUT HUMANIST MARRIAGES

Humanist weddings are non-religious wedding ceremonies that are fully customised to match the deepest-held values and beliefs of the couple getting married. They are conducted by a humanist celebrant, someone guaranteed to share their beliefs. Through an extended period of close collaboration with the couple, the celebrant produces a completely bespoke script. The ceremony also occurs in whatever location is most meaningful for the couple.

Humanists UK has more than 300 trained and accredited wedding celebrants who already conduct over 1,200 weddings (without legal recognition) in England and Wales each year. Humanist marriages gained legal recognition in Scotland in 2005, the Republic of Ireland in 2012, and Northern Ireland in 2018 following a Court of Appeal ruling that concluded that a failure to do so would be a breach of human rights. Jersey also gave legal recognition to humanist marriages in 2019 and in 2021 Guernsey followed suit.

Legal recognition in England and Wales has been under constant Government review since 2013. The Marriage (Same-Sex Couples) Act gave the Government the power to enact legal recognition of humanist marriages by Order. But in the nine years since, the Government has not done this. Instead it has reviewed the matter three times. The third, current review is by the Law Commission. But 'the Law Commission will not make recommendations as to whether the groups who can solemnize marriages should be expanded', as this is said to be a policy matter for the Government.[1]

It will report in July 2022. Any legislation that follows might come into effect in 2024 at the earliest – if at all (only a third of Law Commission reviews since 2011 have been partly implemented, and

[1] Law Commission weddings project terms of reference: https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2019/07/Terms-of-reference-for-the-Law-Commission-review-of-weddings-FINAL.pdf

only 5% since 2016). Humanists are being made to wait.

GOVERNMENT POSITION ON HUMANIST MARRIAGES

The Government is yet to give its position. It has resisted doing so because it says it is waiting for the Law Commission report before deciding. But it has said that 'Reform of marriage law in England and Wales should be undertaken on a comprehensive rather than piecemeal basis.'[2]

This position was key to it winning a court case in 2020, when six humanist couples took a legal case to the High Court. They argued that they were discriminated against by the fact that religious marriages are legally recognised but humanist marriages are not. The judge in the case agreed, ruling that 'the present law gives rise to… discrimination'. She also ruled that, in light of that, the Secretary of State for Justice 'cannot… simply sit on his hands' and do nothing.

However, given the ongoing Law Commission review, she also said that its refusal to act immediately can be justified 'at this time'. She did so because she considered 'the Defendant's stated desire to consider any reform on a wholesale, rather than piecemeal, basis' was a legitimate aim. She wrote:

> 'In the present case, the Government has identified concerns as to the potential consequences of addressing one area of unequal treatment without doing so as part of a more general reform. Specifically, in relation to the treatment of humanist and other non-religious belief marriages, particular issues were identified relating to the location where the ceremony might take place… these were matters seen to potentially give rise to new species of discrimination if reform was only undertaken on a piecemeal basis.'

From this she concluded, 'Although I may deprecate the delay that has occurred since 2015, I cannot ignore the fact that there is currently an on-going review of the law of marriage in this country.'[3] The couples and Government pursued an appeal of this, but in November 2021 mutually agreed to settle it. Three weeks later, the Government announced the outdoor civil and religious marriage reforms.

More generally, we think that the nine years the Government has already had reviewing the matter is long enough. We don't understand why humanists can't have legal recognition of their marriages on an interim basis, even if marriage law is then changed again after the Law Commission review.

IMPACT OF OUTDOOR MARRIAGE REFORM ON HUMANIST MARRIAGES

As can be seen, the Government has delayed – for nine years and counting – any legal recognition of humanist marriages on the basis that piecemeal reform of marriage law is undesirable, and that wholesale reform is the only way to go. Piecemeal reform may, the Government says, lead 'to new species of discrimination', particularly 'relating to the location where the ceremony might take

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[2] Written question answered 1 September 2020: https://questions-statements.parliament.uk/written-questions/detail/2020-07-21/77802

[3] *Harrison & Ors, R (On the Application Of) v Secretary of State for Justice* [2020] EWHC 2096 (Admin) (31 July 2020): https://www.bailii.org/ew/cases/EWHC/Admin/2020/2096.pdf

place'. But the Government has undermined these arguments against interim humanist marriage reform by making just such a reform for civil and religious marriages.

The Government emphasised, in its announcement of the outdoor marriage reform, the need for 'greater flexibility especially during the pandemic when there are important public health considerations to take into account.' But this logically also applies to humanist weddings. At the moment, all couples having a humanist wedding are forced to have two ceremonies to gain legal recognition, including their unwanted civil marriage. Removing the need for the civil marriage would be a very sensible reform during the pandemic, even if only interim.

We want the UK Government to use its existing powers to enact recognition of humanist marriages, by Order, without delay – under section 14 of the 2013 Marriage Act. A draft has been produced and only needs a positive resolution with up to 90 minutes before each House. It can be done on the same interim basis as the outdoor marriage reforms.

THE WIDER CASE FOR HUMANIST MARRIAGE RECOGNITION

- **It is fair**: the 1,200 couples a year who have humanist weddings here already should have the same opportunity to marry *in line with their beliefs* as their religious counterparts.
- **It strengthens freedom of belief:** The High Court has already ruled that the lack of legal recognition is 'discrimination'.
- **It is democratic:** 95% of respondents to a 2014 MoJ consultation supported it. A 2019 YouGov poll found 69% in favour and just 12% opposed, with a majority of every religious group in favour.
- **It is good for marriage:** FOI data from Scotland shows that couples married in a humanist ceremony are almost four times less likely to divorce compared with all other types of marriages.
- **It is popular and will be good for the economy:** The number of humanist weddings in Scotland have risen since legal recognition in 2005 to over 6,000 in 2019 – over 20% of the total, meaning there are now more humanist marriages in Scotland than Christian marriages.
- **It furthers the levelling up agenda:** Scotland, Northern Ireland, the Channel Islands, and Ireland all already have legally recognised humanist marriages. England and Wales has fallen behind.
- **It helps with the marriage backlog:** There is currently a backlog of couples wishing to get married post-Covid, and not enough registrars to go around. Many of those couples don't want a civil marriage and just want their humanist wedding to be legally recognised. So extending legal recognition would clearly help address the problem.

For more details, information, and evidence, contact Humanists UK:

Richy Thompson
Director of Public Affairs and Policy
0781 5589 636
020 7324 3072
richy@humanists.uk
humanists.uk

APPENDIX: HUMANIST MARRIAGE CHRONOLOGY

1890s: Humanists UK officiants first perform weddings, shortly after its founding in 1896. Relatively lax interpretations of the law at the time meant that these generally had legal recognition.

1970s: Tightening up of use of the marriage law leads Government officials to pick up the anomalous position of humanist marriages happening outside of genuine places of worship, and so legal recognition of humanist marriages is taken away.

1980: Court case famously establishes that humanism, though charitable, is not a religion.

2001: Government launches wholesale review of marriage law reform, with plans to switch from the present system of control by authorisation of venues to one of recognition of celebrants. Humanists UK makes case for inclusion in new scheme.

2004: Wholesale review abandoned. Government instead proposes further investigation and consultation, to look to 'change the legal requirement for marriage ceremonies to be either civil or religious.' But this never happens.

2005: Scottish Registrar General brings about legal recognition of humanist marriages in Scotland through a reading in of belief marriages into provisions for religious marriages. This is possible because marriage law there is based on recognising organisations and officiants, rather than places of worship, the system in England and Wales. Humanist marriages then begin to grow in popularity.

2012: Humanist marriage Private Members' Bill brought forth in the House of Lords for the first time, at the suggestion of the then Marriage Minister. Ireland passes a Humanist Marriage Act.

2013: After extensive debate during the passage of the Same-Sex Marriage Act, it becomes clear that there is support for legal recognition of humanist marriages in both Houses. Government introduces and Parliament passes an amendment to the Bill, which becomes section 14 of the Act, giving it the power to extend legal recognition to belief marriages by order, and mandating a Government consultation and decision on the matter by the end of 2014.

2014: Ministry of Justice consultation returns over 95% for legally recognised humanist marriages, with the Church of England making it clear it is not opposed and indeed can see why non-religious people may want someone of like mind to marry them. But the MoJ instead refers the matter to the Law Commission, citing inconsistencies in who can presently do outdoor marriages and the undesirability of piecemeal reform. Meanwhile, Scottish Marriage Act puts humanist marriages on a statutory footing.

2015: Law Commission reports that the lack of recognition for humanist marriages is 'unfair', but also raises the same issues as the MoJ. Instead, it proposes that it conduct a second, 'thorough review of the law as a whole… in order to provide a system that is both more coherent and fair to all'.

2017: Two years on, MoJ Minister belatedly writes to Commission: 'After careful consideration, I have concluded that now is not the right time to develop options for reform to marriage law.' Northern Ireland High Court rules that lack of legal recognition of humanist marriages is breach of Human Rights Act, and orders a reading in as in Scotland. Decision is stayed pending appeal.

2018: All-Party Parliamentary Humanist Group publishes report on humanist marriages, dismantling reasons for delay.[4] Northern Ireland Court of Appeal finds a way to extend legal recognition to humanist marriages, but as a form of civil marriage, not belief marriage. Jersey extends legal recognition to humanist marriages. Couple threatens UK Government with court case over lack of recognition in England and Wales. Government subsequently announces Law Commission review.

2019: Government takes nine months to agree terms of reference for review with Law Commission. Final terms specify that Commission should come up with scheme to recognise humanist marriages, but uniquely specify that it should not recommend whether they are not. More humanist than Christian marriages in Scotland, reflecting growth since the law change there.

2020: Six couples take humanist marriage case before High Court. Judge rules that lack of legal recognition is 'discrimination', but refuses to give declaration of incompatibility, as 'the Defendant's stated desire to consider any reform on a wholesale, rather than piecemeal, basis' was a legitimate aim. 'Specifically, in relation to the treatment of humanist and other non-religious belief marriages, particular issues were identified relating to the location where the ceremony might take place… these were matters seen to potentially give rise to new species of discrimination if reform was only undertaken on a piecemeal basis.' Couples and Government launch cross-appeals of the judgment. Law Commission consultation subsequently delayed by six months due to pandemic, finally closing in January 2021, but Commission says it is still on track to report by December 2021. Northern Ireland Government recognises that recognising humanist marriages as a form of civil marriage is leading to discriminatory treatment compared to religious marriages, so instead starts recognising them as belief marriages through a reading into the law.

2021: Guernsey legally recognises humanist marriages. Northern Ireland launches consultation on putting humanist marriages on a proper statutory footing. Welsh Government calls on UK Government to extend immediate legal recognition. UK Government lays order introducing outdoor civil marriages on an interim basis. Government and couples withdraw their appeals to High Court judgment. Three weeks later, Government launches consultation on making this permanent, and on also introducing outdoor religious marriages, all outside and ahead of the Law Commission review. Law Commission announces delay in its final report until July 2022.

End 2022: UK Government likely to respond to Law Commission final report – standard response time is six months. Unclear what next but quite possibly a further consultation on a white or green paper or draft bill, which may not happen immediately but perhaps after further reflection.

May 2023: First date at which the Government may be likely to announce a new marriage bill, following on from the Law Commission review.

April 2024: First date at which any marriage bill following on from Law Commission review may complete its legislative passage, perhaps coming into force later that year.

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[4] *'Any Lawful Impediment?' A report of the All-Party Parliamentary Humanist Group's inquiry into the legal recognition of humanist marriage in England and Wales*: https://humanists.uk/wp-content/uploads/APPHG-report-on-humanist-marriage.pdf