

MARRIAGE (AUTHORISED BELIEF ORGANISATIONS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Marriage (Authorised Belief Organisations) Bill as introduced in the House of Commons on 22 October 2020 (Bill 203).

- These Explanatory Notes have been prepared by Rehman Chishti MP in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill

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Overview of the Bill

- 1 The Marriage (Authorised Belief Organisations) Bill amends the Marriage Act 1949 to:
 - (a) provide a scheme by which belief organisations may be authorised to conduct legally recognised marriages in England and Wales;
 - (b) provide under that scheme legal recognition for marriages conducted by the British Humanist Association (which currently operates under the name Humanists UK); and
 - (c) allow for further belief organisations to be authorised under the same scheme, by regulations made by the Secretary of State.
- 2 The scheme enables marriages by authorised belief organisations to be legally recognised under provisions that are essentially the same as existing statute law with respect to the Society of Friends (Quakers) and Jewish groups.

Policy background

- 3 Currently, in England and Wales, there is legal recognition for both civil marriages and religious marriages, but not for marriages by non-religious belief organisations including humanist groups. The position in Scotland and Northern Ireland is different as humanist marriages are already legally recognised there.
- 4 A humanist wedding is a non-religious ceremony that is conducted by a humanist celebrant. It differs from a civil wedding in that it is explicitly humanist, rather than neutral as to religion or belief. Its content can reflect a couple's non-religious beliefs, is conducted by a celebrant who shares those beliefs and values, and can take place in a location beyond a registry office or place of worship, such as a location which is more meaningful to the couple. Humanists UK believes that it is integral to humanist ceremonies that these things can be the case.
- 5 At present, couples in England and Wales wishing to have such a ceremony and who wish to be legally married must have in addition a separate civil marriage. This process incurs additional expense and administration compared to couples who have a religious ceremony, and has been the basis of a successful legal challenge in Northern Ireland (see *Smyth [2017] NIQB 55 No. 038954*). Furthermore, the ceremony couples see as their real marriage ceremony is not the one recognised in law. In 2018 the All-Party Parliamentary Humanist Group published a report of its inquiry into the subject. This goes into the topic in more detail.¹
- 6 Section 14 of the Marriage (Same Sex Couples) Act gave the Government the power to introduce legal recognition of belief marriages by order, and mandated that it hold a consultation on whether to do so. That consultation was held by the Ministry of Justice in

¹ '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, All-Party Parliamentary Humanist Group, 2018: <https://humanism.org.uk/wp-content/uploads/APPHG-report-on-humanist-marriage.pdf>

2014. Over 95 per cent of respondents supported changing the law.²

- 7 Subsequently, the Ministry of Justice asked the Law Commission to conduct a review of the matter, which it published in 2015. The Law Commission recommended that the Government conduct a wholesale review of marriage law. That review was commissioned by the Government in 2018 and began in 2019.
- 8 With respect to belief marriages, the scope of the review says that ‘The Law Commission will consider: ... Who should be able to solemnize a marriage, including considering how a scheme could include weddings conducted by non-religious belief organisations... The Law Commission will not, however, be making recommendations on whether as a matter of policy new groups should be allowed to conduct legally binding weddings, which is a decision for Government.’
- 9 In July 2020, a legal challenge brought by six couples wishing to have (or have had) legally recognised humanist marriages in England was heard before the High Court. Later that month, the judge in the case ruled that the failure to provide legally recognised humanist marriages means that ‘the present law gives rise to... discrimination’, and that the Secretary of State for Justice ‘cannot... simply sit on his hands’ and do nothing. However, she said, given that the Government is currently giving the matter consideration in the form of a review into marriage law by the Law Commission, the Government’s refusal to act immediately can be justified ‘at this time’ and 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.’ As a consequence, she declined to make a formal declaration that the Government is acting unlawfully at this time (see *R (Harrison and Ors) v Secretary of State for Justice* [2020] EWHC 2096). Her conclusion was:

‘I find: (1) that the facts of this case fall within the ambit of article 9 ECHR; (2) there is a difference of treatment in respect of that right between the Claimants and others put forward for comparison; (3) this difference is on a prescribed ground under article 14 ECHR; (4) the Claimants’ comparators are in an analogous situation; but (5) the Defendant has demonstrated a legitimate aim in seeking to address differences in treatment as part of a wholesale reform of the law of marriage and, given the on-going review, has - at this time - established that a fair balance has been struck between the individual rights of the Claimants and wider community interests.’

- 10 The claimants are currently considering appealing this last point. They are arguing that the judge gave insufficient consideration to various piecemeal reforms that the Government is currently making with respect to marriage law, which undermines the Government’s argument that it must wait for a wholesale review – including extending legal recognition to outdoor civil marriages, and limited reform relating to the law on marriage and religious

² *Marriages by non-religious belief organisations*, Ministry of Justice, 2015:

<https://consult.justice.gov.uk/digital-communications/marriages-by-non-religious-belief-organisations/>

weddings; and also that the judge did not sufficiently consider the possibility of interim reform, alongside future wholesale reform.

- 11 In September 2020, the Law Commission published its proposals for reform of marriage law.³ As per the terms of reference, this includes a scheme by which belief marriages could gain legal recommendation, but no recommendation as to whether they should. The consultation is expected to run until December. Final proposals will follow in the second half of 2021. If any legislation is to follow this proposal, it will presumably do so the following year, with it coming into force therefore from 2023.
- 12 However, it should be noted that since 1966, only 57% of Law Commission reports have been wholly implemented, or 64% at least partly. Further, since 2001 those figures are 36% wholly, or 42% partly; since 2011 they are 29% and 33%; since 2016 they are 0% and 5%.⁴
- 13 At present, there appears to be only one belief organisation that is conducting (non-legally recognised) weddings in England and Wales, namely Humanists UK. Humanists UK reports that it conducts over 1,000 weddings a year. For context, this is fewer weddings than the number of legally recognised marriages conducted by local authorities, the Church of England, the Catholic Church, the Church in Wales, and the Methodist Church, but more than any other religious group.
- 14 In Scotland, in 2005, the Scottish Registrar General, under section 3 of the Human Rights Act 1998, interpreted those provisions so that existing Scottish legal provisions that applied to religious groups, also applied to belief groups. This led to humanist marriages – but no other type of belief marriage – being legally recognised. The number of humanist marriages in Scotland has increased in recent years and now stands at over 6,000 a year. In 2014, the Marriage and Civil Partnership (Scotland) Act amended Scots law to provide for legally recognised belief marriages, making explicit what had been the practice for almost a decade. (The law in England and Wales is not susceptible to reinterpretation such as the Scottish Registrar General applied in 2005.)
- 15 In Northern Ireland, in 2017 humanist Laura Lacle took a legal challenge against the lack of legal recognition of humanist marriages on the basis that the provision of religious but not humanist marriages was a breach of Article 9 of the European Convention on Human Rights (freedom of religion or belief), taken together with Article 14 (prohibition on discrimination) – as implemented in UK law through the Human Rights Act 1998. Her claim was successful at both the High Court and in 2018 at the Court of Appeal (*Smyth [2017] NIQB 55 No. 038954*). As a result, humanist marriages have been legally recognised in Northern Ireland since August 2018. This judgment is not legally binding on England and Wales but is persuasive case law.
- 16 In Jersey, a new law giving recognition to humanist marriages came into force in 2018, with

³ *Getting Married: A Consultation Paper on Weddings Law*, Law Commission Consultation Paper No 247, September 2020: <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/09/Getting-Married-A-Consultation-Paper-on-Wedding-Law-web.pdf>

⁴ As per the Law Commission's Implementation Table: <https://www.lawcom.gov.uk/our-work/implementation/table/>

the first humanist ceremonies occurring in 2019.

- 17 In 2020, the Guernsey Assembly passed legislation to give legal recognition to humanist marriages, which is expected to gain royal assent and come into force in 2021.

Legal background

- 18 The Bill amends the Marriage Act 1949 to provide a scheme by which belief organisations can be authorised to perform legally recognised marriages. It does so by applying provisions that are essentially the same as currently apply to the Quakers and the Jews.
- 19 The scheme provides that within three months of the Bill's passage legal recognition should be extended to marriages conducted by Humanists UK. In addition, the Bill gives the Secretary of State the power, by regulations, to extend legal recognition to other belief organisations under the same scheme, should they consider it to be desirable. Any such regulations would be subject to affirmative resolution procedure in both Houses of Parliament.
- 20 It is possible that the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 will have its marriage-related provisions commenced before completion of the passage of this Bill. If so, then that will change marriage law provisions related to the registration of marriages and it will be necessary to amend this Bill to ensure that what it provides for with respect to the registration of marriages according to the usages of belief organisations matches the new provisions for other types of marriage.
- 21 Nothing in this Bill precludes further, future amendment of marriage law, should the Law Commission review prompt a wholesale overhaul of existing statute. This Bill could be seen as simply providing legal recognition of humanist marriages on an interim basis, pending that reform coming into force in several years' time. It would also ensure that legal recognition happens, if the Law Commission review of marriage law does not result in further legislation.

Territorial extent and application

- 22 This Act extends to England and Wales only. Marriage law is devolved to Scotland and Northern Ireland.

Commentary on provisions of Bill

Clause 1: Marriages according to the usages of approved organisations

- 23 Clause 1 amends the Marriage Act 1949 by inserting a new section 47A, after section 47, providing for marriages according to the usages of authorised belief organisations.
- 24 Inserted subsection (1) provides that authorised belief organisations may solemnise marriages according to their usages. However, no religious service may form a part of such marriages. “Authorised belief organisation” is an organisation which has been authorised to perform marriages according to its usages under subsections (2) or (3) (and is defined in paragraph 17 of the Schedule). Inserted subsection (2) specifies that the British Humanist Association (which currently operates under the name Humanists UK) is such an authorised belief organisation. Inserted subsection (3) specifies that the Secretary of State may, by regulations made by statutory instrument, authorise further such belief organisations.
- 25 Inserted subsections (4) to (7) specify that authorised belief organisations must designate a principal officer who in turn will appoint registering officers who can solemnise marriages for authorised belief organisations. The principal officer may also impose such conditions as seem to him or her to be desirable relative to the conduct of marriages by the organisation and to the safe custody of marriage register books. Subsection (5) sets out that the principal officer, when appointing registering officers, must within one working day of appointing them certify their names and addresses to the Registrar General and to the superintendent registrars of the registration districts in which the persons live, on a form supplied for that purpose by the Registrar General; provide, on that form, the name and address of their authorised belief organisation, and any other information the Registrar General deems necessary for the purposes of certification and authorisation; sign that certification form; and get the appointed registering officer to also sign that certification form. These provisions are modelled on existing provisions, for example those found in regulation 6 of The Marriage of Same Sex Couples (Registration of Buildings and Appointment of Authorised Persons) Regulations 2014, which concerns appointment of authorised persons by the trustees or governing body of a building (a registered place of worship) registered to conduct religious marriages.
- 26 Inserted subsection (8) specifies that the Registrar General will then supply duplicate marriage register books to any appointed registering officers, in accordance with section 54 of the Marriage Act 1949 (which pertains to the provision of marriage books by the Registrar General), and only upon their supply may marriages be solemnised by that registering officer.
- 27 Inserted subsection (9) provides that the Registrar General may suspend the appointment of a registering officer if they are not satisfied that that the registering officer is providing sufficient security for the safe custody of marriage register books. Inserted subsections (8) to (9) are modelled on subsections 44(4) to (5) of the Marriage Act 1949, which pertain to the solemnization of religious marriages in registered buildings by authorised persons.
- 28 Inserted subsection (10) provides that marriages by authorised belief organisations shall be solemnised with open doors in the presence of either a registrar of the registration district in

which the marriage takes place, or a registering officer appointed in accordance with inserted subsections (4) to (5). Two witnesses must also be present, and the marrying couple must also make the declarations and use the form of words set out in subsection (3) or (3A) of section 44 of the Marriage Act 1949. These requirements are equivalent to those for religious marriages other than Jewish, Society of Friends (Quakers), Church of England, or Church in Wales marriages – as set out in section 44 of the Marriage Act 1949. Inserted subsection (11) provides that a marriage solemnised according to the usages of an authorised belief organisation shall only be valid if, at the time when notice of marriage is given, a certificate purporting to be signed by the principal officer or other registering officer is produced, to the effect that at least one person giving notice of marriage is a member of the organisation and that the other is either a member of the organisation or authorised to be married according to its usages under or in pursuance of a general rule of the said organisation.

- 29 Inserted subsection (12) further specifies that such a certificate shall be taken as conclusive proof that any person to whom it relates is authorised to be married according to the usages of the authorised belief organisation, and the entry of the marriage in the marriage book, or a certified copy thereof, shall be taken as conclusive evidence that such a certificate was produced.
- 30 Inserted subsection (13) specifies that a copy of any general rule of the relevant authorised belief organisation purporting to be signed by the principal officer shall be admitted as evidence of the general rule in all proceedings touching the validity of any marriage solemnised according to the usages of the organisation. These provisions are similar to those found in subsections 47(2) to (4) of the Marriage Act 1949, which pertains to marriages according to the usages of the Society of Friends.
- 31 Inserted subsection (14) specifies that any statutory instruments made under inserted subsection (3), in other words made to authorise further belief organisations are subject to the affirmative procedure.

Schedule

- 32 The Schedule to the Act makes consequential amendments to the Marriage Act 1949. In broad terms, it sees authorised belief organisations inserted into the Act in a manner matching the existing provisions for the Society of Friends (Quakers) – other than with respect to those provisions dealt with by Clause 1. Paragraph 17 of the Schedule also defines “belief organisation” as meaning an organisation whose principal or sole purpose is the advancement of a system of non-religious beliefs which relate to morality or ethics, and which meets regularly for that purpose; “authorised belief organisation” means a belief organisation that has been authorised by section 47A(2) or under section 47A(3) of the Act to perform marriages according to its usages; and “British Humanist Association” as meaning the British Humanist Association, a company limited by guarantee and registered charity No 285987.

Financial implications of the Bill

- 33 The Bill will have some financial implications, as it would necessitate the updating of some Government databases and the provision of new forms. However, because the method of legal recognition of belief marriages is identical to that of the Quakers and Jews, these implications are expected to be relatively minor.

Related documents

- 34 The following documents are relevant to the Bill and can be read at the stated locations:

- Marriage Act 1949: <http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/76/data.pdf>

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