
Marriage of same sex couples across the UK:

What's the same and what's different?

RESEARCH PAPER 54/14 *14 May 2014*



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Legislation in England and Wales (the *Marriage (Same Sex Couples) Act 2013*) and in Scotland (the *Marriage and Civil Partnership (Scotland) Act 2014*) introduces marriage for same sex couples. The legislation will also enable civil partners to convert their civil partnership into marriage, and transsexual people to change their legal gender without necessarily having to end their existing marriage.

There is no legislation to allow marriage of same sex couples in Northern Ireland and, in 2012, 2013 and 2014, the Northern Ireland Assembly voted against private members' motions to allow such marriages.

The two Acts, which are not yet fully implemented, are similar in many respects but also include provisions which are different from one another. This paper provides information about the similarities and differences relating to marriage of same sex couples and the legislation which provides for it, as well as about the similarities and differences relating to marriage of opposite sex couples and civil partnership across the UK.

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We do, however, welcome written evidence that relates to our papers and this should be sent to Research and Information Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or emailed to RLS@niassembly.gov.uk

Summary

Legislation in England and Wales (the *Marriage (Same Sex Couples) Act 2013*) and in Scotland (the *Marriage and Civil Partnership (Scotland) Act 2014*) includes provision (among other things) for:

- civil marriage of same sex couples;
- religious marriage of same sex couples, where the religious organisation wishes to conduct such marriages;
- protection for religious bodies and individuals who do not wish to conduct marriage ceremonies for same sex couples;
- conversion of civil partnerships to marriage; and
- enabling transsexual people to change their legal gender without necessarily having to end their existing marriage.

There is no legislation to allow marriage of same sex couples in Northern Ireland and, in 2012, 2013 and 2014, the Northern Ireland Assembly voted against private members' motions on marriage of same sex couples.

The first marriages of same sex couples in England and Wales took place on 29 March 2014 and are expected to take place in Scotland later in 2014.

The two Acts, which are not yet fully implemented, are similar in many respects but also include provisions which are different from one another. This paper provides information about the similarities and differences relating to marriage of same sex couples and the legislation which provides for it, as well as about the similarities and differences relating to marriage of opposite sex couples and civil partnership across the UK.

At-a-glance: marriage of opposite sex couples, marriage of same sex couples and civil partnership across the UK

England & Wales	Scotland	Northern Ireland	Section of this paper
Which legislation provides for marriage of same sex couples?			
The <i>Marriage (Same Sex Couples) Act 2013</i>	The <i>Marriage and Civil Partnership (Scotland) Act 2014</i>	No legislation	Summary
When will the first marriage of a same sex couple be allowed?			
The first marriage of a same sex couple took place on 29 March 2014.	Intention is by the end of 2014 pending secondary legislation including an Order at Westminster under section 104 of the <i>Scotland Act 1998</i> .	n/a	Summary
Marriage ceremonies			
Where can an opposite sex couple have a religious wedding ceremony?			
In a building of the Church of England or the Church in Wales; in a religious building of another denomination or religion which has been registered for the purpose; elsewhere in limited circumstances.	Anywhere agreed by an authorised celebrant. The location needs to be specified in the Marriage Schedule.	Anywhere agreed by an authorised celebrant.	1
Is belief marriage (such as humanist marriage) legally recognised (of opposite sex couples and same sex couples)?			
Currently no. A review is to be undertaken.	Yes, since 2005, certain belief bodies have been allowed to solemnise opposite sex marriages. The 2014 Act puts belief and religious marriages on the same footing.	No	4.7
Which religious or belief bodies can solemnise marriages of same sex couples?			
Religious bodies which have "opted in" to conduct marriage of same sex couples. The Church of England and Church in Wales cannot opt in. Belief bodies are not able to solemnise legally recognised marriages of same sex couples.	Religious and belief bodies which have "opted in" and meet the qualifying requirements which will be laid down in regulations.	n/a	4.2
Where can a same sex couple have a religious marriage ceremony once the Acts are in force?			
In a religious building registered for the purpose, and in limited circumstances elsewhere, if the religious body has "opted in".	Anywhere agreed by an authorised celebrant whose religious or belief body has "opted in". The location needs to be specified in the Marriage Schedule.	n/a	4.2

Where can a civil marriage take place (opposite sex couples and same sex couples)?			
Register office or approved premises or elsewhere in limited circumstances.	Currently at a registrar's office or approved place. 2014 Act to introduce civil marriage ceremonies at any appropriate place in the registration district of the authorised registrar so long as it is not religious premises.	Currently at a registrar's office or approved place.	4.1
At what age can you get married without parental (or other) consent (opposite sex couples and same sex couples)?			
18 (with limited exceptions for people aged 16 to 18)	16	16 for an opposite sex marriage.	4.7
Will overseas marriages of same sex couples be recognised?			
Yes, new and existing overseas marriages of same sex couples which are valid as to capacity and form according to the relevant law have been recognised under the law of England and Wales from 13 March 2014.	Yes, new and existing overseas marriages of same sex couples which are valid as to capacity and form according to the relevant law will be recognised under the law of Scotland.	Recognised as civil partnership not as marriage.	4.6
Civil Partnerships			
Can religious or belief civil partnerships (CP) be registered?			
No	Scottish 2014 Act to introduce religious or belief registration of CP. Religious or belief bodies have to "opt in" and meet the qualifying requirements which will be laid down in regulations.	No	3.2
Where can CP registrations be conducted?			
In a register office; approved premises; and on religious premises where the religious organisation permits this and the premises have been approved for the purpose.	In a register office or approved place. Not permitted in religious premises unless conducted by a religious or belief body (see above).	Not permitted in religious premises.	5
Which CPs can be converted/changed to marriage?			
Those registered in England and Wales and certain CPs registered outside the UK by British consulate or armed forces personnel (where the couple elected England and Wales as the relevant part of the UK).	Qualifying CPs registered in Scotland or by British consulate or armed forces personnel (where the couple elected Scotland as the relevant part of the UK). Upcoming further consultation on whether CPs registered outside Scotland can also be changed.	n/a	5
What is the procedure to convert/change a CP to a marriage?			
There will be an administrative process (to be set out in regulations).	A couple can have a marriage ceremony or go through an administrative process (to be set out in regulations).	n/a	5

Will there be a review of civil partnership?			
Yes	Yes	No	6
Are opposite sex civil partnerships allowed?			
No, although a recent Government consultation sought views on opening up CPs to opposite sex couples.	No, although it may feature in the upcoming review.	No	6
Rights & Protections			
Are protections in place for those who do not wish to officiate at marriages of same sex couples?			
Yes, for religious organisations and celebrants but not for civil registrars. There are slight differences between the 2013 and 2014 Acts.	Yes, for religious or belief celebrants but not for civil registrars. There are slight differences between the 2013 and 2014 Acts.	n/a	4.3
Are there protections in place for those who do not agree with marriage of same sex couples?			
Yes, there is some protection although there are slight differences between the 2013 and 2014 Acts.	Yes, there is some protection although there are slight differences between the 2013 and 2014 Acts. Additional guidance on Scottish prosecutions has been published by the Lord Advocate.	n/a	4.4 & 4.5
Does the Act make changes to the <i>Equality Act 2010</i>?			
Yes.	There will be changes. The <i>Equality Act</i> is reserved so these need to be made at Westminster through an Order under section 104 of the <i>Scotland Act 1998</i> .	n/a	4.4
Divorce / Annulment			
Will adultery be a basis for divorce for a same sex couple?			
Adultery in relation to marriage of both opposite sex couples and same sex couples will continue to mean sexual intercourse between a man and a woman outside of marriage. All couples may cite infidelity not covered by this definition as a basis for divorce due to "unreasonable behaviour".	Adultery in relation to marriage of both opposite sex couples and same sex couples will continue to mean sexual intercourse between a man and a woman outside of marriage. All couples may cite infidelity not covered by this definition as a basis for divorce due to "unreasonable behaviour".	n/a	4.6
Will non-consummation or permanent or incurable impotence be a basis for annulment for a same sex couple?			
No.	No, (non-consummation is not a term used in Scots law).	n/a	4.6

Transgender provisions			
Can someone change their legal gender without getting divorced?			
Yes, but only if their spouse consents to the marriage continuing.	Yes. The 2014 Act allows that even if the transgender person's spouse does not consent to the marriage continuing they may apply to the Sherriff Court for a full gender recognition certificate. The spouse has the right to a divorce at any point.	No	7
Pensions			
How will same sex spouses be treated in terms of occupational pension rights?			
As civil partners, pending review.	As civil partners, pending review	n/a	4.6
Will there be a review of the differences in survivor benefits in occupational pensions for mixed / same sex couples?			
Yes	Yes – Pensions reserved issue and UK review will extend to Scotland.	No	4.6

1 The law on marriage of opposite sex couples and civil partnerships

1.1 Where can an opposite sex couple get married?

England and Wales

In England and Wales, the regulation of marriage is based largely on the building in which the relevant marriage takes place.

- An opposite sex couple may have a civil marriage at a register office or approved premises, such as a hotel. Civil marriages must take place in the presence of a superintendent registrar and a registrar.
- An opposite sex couple may marry in a building of the Church of England or the Church in Wales. Clergy of the Church of England are under a common law duty to marry a parishioner (in an opposite sex couple) in their parish church or in the church of a parish with which they have a qualifying connection. However, members of the clergy may sometimes refuse to solemnise a marriage; for example, [they may refuse to marry a divorced person if the former spouse is still alive](#). The Church in Wales also has a common law duty to marry opposite sex parishioners in their parish church by virtue of it being previously established (it became disestablished in 1920).
- An opposite sex couple may also marry according to the religious rites of other religions or denominations (eg Catholic, Methodist, Muslim), in buildings that have been registered for the purpose. An authorised person (sometimes a minister of the religious group concerned) may be appointed to register marriages without the presence of the registrar. There is no need to undergo a separate civil ceremony when a religious marriage is conducted in a place of worship registered for the purpose. Those who wish to celebrate their marriage in a place of worship that has not been registered for marriage must go through an additional civil ceremony in order to be legally married. For mainly historical reasons, those marrying according to Jewish and Quaker customs are exempt from some of the conditions imposed on those marrying according to all other rites (for example, as to the venue).
- Depending on their circumstances, opposite sex couples may also marry in naval, military and air force chapels; elsewhere, under a licence from the Registrar General, if one of the parties is seriously ill and not expected to recover; and at the residence of someone who is housebound or detained.

Scotland

In Scotland the authority to solemnise a wedding is invested in the celebrant, not the building in which the ceremony takes place. Scotland allows for the solemnisation of belief marriages, for example, humanist marriages. A religious or belief marriage may take place anywhere as long as it is solemnised by a celebrant entitled to do so under the *Marriage (Scotland) Act 1977* (the 1977 Act). A celebrant is not under any obligation to solemnise a marriage.

A civil ceremony may take place at a registrar's office or an approved place, or once the *Marriage and Civil Partnership (Scotland) Act 2014* (the Scottish 2014 Act) comes into force, at any location agreed by the celebrant and the couple as long as it is not religious premises. More information on this is provided in section 4 of this paper.

Northern Ireland

The *Marriage (Northern Ireland) Order 2003* changed the emphasis in religious marriage in Northern Ireland from the licensing of buildings to the authorisation of officiants (this is the term used in Northern Ireland for celebrants) as persons to conduct marriages. It allows

religious bodies to nominate persons to solemnise marriage but does not prescribe where a ceremony can take place. A religious ceremony may therefore take place anywhere in Northern Ireland. An officiant is not obliged to solemnise a marriage and may refuse to solemnise a marriage in a particular location.

A civil marriage may only be conducted by the Registrar or Deputy Registrar for the District in which it is to take place. A civil ceremony may be conducted in the Registrar's Office or in an approved place. Venues are approved by the authority for three years (or temporary approval for one wedding). Each authority is required to keep a register of every approved place within its area.

1.2 Civil partnerships in the UK

England and Wales

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.

When civil partnerships were introduced, the previous Government's stated view was that it was not necessary to extend eligibility to opposite sex couples because they already had the option to marry and the legal consequences of the two institutions were very similar.

When enacted, the *Civil Partnership Act 2004* prohibited civil partnership registrations taking place on religious premises. Like civil marriage, they could take place at register offices or approved premises (such as a hotel). However, a change in the law, which came into effect on 5 December 2011, now enables civil partnerships to be registered on religious premises where religious organisations permit this, and the premises have been approved for the purpose. The new law also states, for the avoidance of doubt, that religious organisations are not obliged to host civil partnership registrations if they do not wish to do so. Civil partnership registrations on religious premises remain civil ceremonies although a religious ceremony may precede or follow the registration.

A House of Commons Library standard note, [Civil partnerships on religious premises](#) provides more information. (SN/HA/6510, 18 December 2012).

Scotland

The Scottish Parliament agreed by [Legislative Consent Motion \(LCM\)](#) to the inclusion of Scottish provisions in a Westminster *Civil Partnership Bill* on 3 June 2004. (An explanation of the LCM process is available on [the Scottish Parliament website](#)). This allowed same sex couples to access a comprehensive package of rights and responsibilities in both reserved and devolved areas across the UK. In Scotland there is devolved legislation regarding the formation of legally recognised relationships as well as covering the functions of the Registrar General for Scotland. As such, the *Civil Partnership Act 2004* contains separate provisions which reflect the legislation and procedures that apply in Scotland. Currently no civil partnerships are permitted to take place in religious premises. The Scottish 2014 Act will remove this bar to reflect the introduction of religious or belief registration of civil partnerships.

More information is available in the Registrar of Scotland's leaflet '[Registering a Civil Partnership in Scotland](#)'.

Northern Ireland

The Northern Ireland Office initiated a [public consultation](#) on the issue of civil partnership in December 2003, stating Ministerial support for its introduction into Northern Ireland through the Westminster Bill. The proposal was highly controversial. There were 462 [responses](#) to

the consultation, 90% from individuals, and 10% from representative groups or bodies. Most of the individuals who responded (86%) were opposed to the introduction of civil partnership in Northern Ireland; however, most of the organisations were in support of the proposal. Of those respondents who opposed civil partnership, marriage issues featured as a significant reason for objection (87%). In their view, civil partnership equated to marriage and many felt that it would undermine marriage.

There are minor, mainly procedural differences between the provisions in the *Civil Partnership Act 2004* for Northern Ireland and England and Wales reflecting the different legal system in Northern Ireland. No civil partnerships are permitted to take place in religious premises in Northern Ireland.

The first civil partnership took place in Belfast on 19 December 2005. In 2012, 101 civil partnerships were registered, a number close to the annual average figure.

1.3 How does civil partnership differ from marriage?

Civil partners have the same rights and responsibilities as married couples in many areas including tax, social security, inheritance and workplace benefits. However, civil partnership is a legal relationship, distinct from marriage, which is currently exclusive to same sex couples.

There are also other differences, including:

- in England and Wales the formation of civil partnerships can only be a civil, and not religious, procedure, whereas, in relevant circumstances, couples may choose to have either a religious or a civil marriage ceremony. As mentioned previously, in Scotland, the 2014 Act will introduce the religious and belief registration of civil partnerships;
- adultery is not a basis for dissolution of a civil partnership (as it is for divorce); however, infidelity may be a contributory factor where “unreasonable behaviour” is cited as a factor for seeking dissolution of a civil partnership;
- differences in procedure; civil partnerships are registered by signing the civil partnership document, with no words required to be spoken, whereas marriages are solemnized by saying a prescribed form of words;
- differences around eligibility for some pension rights which are explained in more detail in section 4.6 of this paper.

2 Marriage of same sex couples: policy development

2.1 Change in attitudes and opinions

When the Bill which became the *Civil Partnership Act 2004* was debated, the position of the then Labour Government, and others, was that marriage should be possible only between people of opposite sex.

However, in the period between the enactment of the *Civil Partnership Act 2004* and the introduction of the legislation in England and Wales and in Scotland, many people changed their opinion about whether same sex couples should be able to marry, although a significant number of people have continued to oppose any change.

Some people argued that having separate provisions for same sex and opposite sex couples perpetuated misconceptions and discrimination.

The change in attitude to same sex marriage is illustrated by the position adopted by the lesbian, gay and bisexual charity, Stonewall. Stonewall welcomed the *Civil Partnership Bill* when it was introduced and considered that it would remedy many of the injustices that committed same sex couples faced in a number of areas. At that time they did not argue for same sex marriage to be introduced.

However, in 2010, [Stonewall announced](#) that it had widened its campaigning objectives to include extending civil marriage to gay people. In 2011, [Stonewall said](#) that it supported the introduction of same sex marriage because gay people still faced prejudice and discrimination:

With the introduction of civil partnerships we believed there would be a marked shift in attitudes which would see measurable reductions in the prejudice and discrimination that gay people face.

Regrettably there is material evidence that this is not the case. Over 20,000 homophobic crimes still take place annually. The vitriol seen in statements by many political and religious figures, particularly some senior clerics, in advance of this consultation demonstrates the persistence of deeply worrying prejudice toward gay people. Same-sex relationships have recently been compared with child abuse, slavery, polygamy and bestiality. This suggests civil partnerships have not been sufficient to diminish the remaining prejudice against gay people. By insisting marriages and civil partnerships be kept separate, organisations and individuals perpetuate the notion, even if inadvertently, that relationships between same-sex couples are not as stable or valid as those between heterosexual couples.

This offensive discourse has led many people to conclude that the extension of marriage is an appropriate remedy to the discrimination that blights the lives of many of Britain's 3.7m lesbian, gay and bisexual people.

2.2 Government consultations

England and Wales

The consultation process for the introduction of marriage of same sex couples began in March 2012 when the Government Equalities Office launched [Equal civil marriage: a consultation](#). At that time the proposals covered only civil marriage, although, following representations by some religious bodies that wanted to be able to offer marriage ceremonies for same sex couples, and others, they were later expanded to include religious marriage for religious bodies which wished to conduct them.

Members of all three main parties, as well as many others, agreed that the ban on marriage of same sex couples should be removed (although others strongly disagreed). The Government spoke of a commitment to ensuring fair treatment and equal opportunities for all and of providing choice in a modern society, saying: "Quite simply, if commitment and marriage is a good thing we should not restrict civil marriage only to opposite sex couples".

Scotland

The first indication that the Scottish Government would consider the issue of marriage of same sex couples appeared in the [SNP Manifesto](#) for the 2011 Scottish parliamentary elections. The Scottish Government conducted two consultations on the issue. The [first consultation](#) focused on marriage of same sex couples and religious ceremonies for civil

partnerships in Scotland. The [second consultation](#) focused on the draft Bill to allow marriage of same sex couples in Scotland and outlined the rationale for introducing the change:

- the introduction of marriage of same sex couples and the religious registration of civil partnership would further equality for LGBT (Lesbian, Gay, Bisexual and Transgender) people;
- LGBT people of faith would welcome the introduction of religious ceremonies at which to register their civil partnership or marry;
- a number of religious bodies would wish to carry out such ceremonies;
- there were existing protections in Schedule 23 to the *Equality Act 2010* which would apply to religious bodies and celebrants who did not wish to take part in same sex ceremonies; there were also plans to extend these protections if the Bill passed.

2.3 Arguments for and against the introduction of marriage of same sex couples

England and Wales

For some time, people have argued that same sex couples should be able to marry, basing their claims on perceived rights under human rights legislation. However, both the [Family Division of the High Court](#) (in 2006), and the [European Court of Human Rights](#) (in 2010), ruled that there was no obligation to recognise marriage of same sex couples on human rights grounds.

The proposals in the Government's consultation paper proved highly controversial, with strong opinions being voiced both for and against marriage of same sex couples. The consultation received the highest number of responses to any Government consultation. Over 228,000 responses were received, together with 19 petitions, one of which, from the Coalition for Marriage (which opposed the proposals), had (at that time) 509,800 signatures.

A number of religious organisations (and others, including some Members of Parliament) were strongly opposed to what they considered to be an attempt to redefine marriage and the effect this would have for society. Some condemned the consultation process because it focussed on how to provide for marriage of same sex couples and not on whether it should be permitted at all. There were claims that the Government was acting without an electoral mandate. Some people questioned why it was necessary to introduce marriage of same sex couples in the face of so much opposition when civil partnerships offered equivalent rights and responsibilities as marriage. They also questioned whether the proposed protections for religious groups would actually work. Opposition to marriage of same sex couples continues.

Public opinion polls during the consultation process generally found more support for marriage of same sex couples than opposition to it, although people's attitudes to marriage of same sex couples were sensitive to the form of the question that pollsters used to ask them about it. Young people were more supportive of marriage of same sex couples than older people, and this was true no matter how the question was phrased.

Marriage of same sex couples statistics are provided in a House of Commons Library Research Paper prepared for second reading of the *Marriage (Same Sex Couples) Bill* – [RP13/08](#), 31 January 2013

Others, including some other religious organisations and gay rights campaigners, welcomed the proposals and spoke of extending the right to marry, rather than of redefining marriage.

Scotland

Mirroring the experience in England and Wales, the Scottish Government's consultations also provoked extremely polarised views both for and against marriage of same sex couples. [The first consultation paper](#) received a total of 77,508 responses. This is the largest number of responses ever received by a Scottish Government consultation. Sixty seven percent of respondents said they did not agree that the law in Scotland should be changed to allow marriage of same sex couples. Similar views were expressed as in England and Wales about the redefinition of marriage and its necessity when the UK already makes provision for civil partnerships. Those with views against marriage of same sex couples also highlighted the weight of response against changing the law in the first Scottish Government consultation. In addition, 54,063 people (as at 1 May 2014) signed a petition organised by [Scotland for Marriage](#), a campaign group representing a variety of religious and non-religious people and organisations, seeking to retain the traditional definition of marriage. Those who were opposed to marriage of same sex couples also had [significant concerns](#) regarding the protection of freedom of speech in general and of religious freedoms in particular. Further [concerns were voiced](#) about the workability of the opting-in system for celebrants and protecting this from challenge in the European Courts.

As in England and Wales, LGBT rights campaigners and some religious organisations in Scotland [welcomed the Bill](#). It was seen as a means of removing the last major piece of sexual orientation discrimination from Scots law and of allowing LGBT people an equal right to marry the person that they love. For example, the Equality Network produced [a document outlining six reasons](#) why people should support marriage of same sex couples. Overall, it argued that it would make Scotland a fairer and more equal society; that this was an issue that mattered to LGBT people; it would strengthen freedom of religion and belief; marriage of same sex couples had public support and political support; and it was already happening in countries around the world.

Northern Ireland

The issue of marriage of same sex couples is highly controversial in Northern Ireland. Those who are opposed view it as an unwelcome redefinition of marriage, whilst those in support see it as an equality issue and an extension of the right to marry. The Northern Ireland Assembly has voted on three occasions against private members' motions on marriage of same sex couples, on 1 October 2012, 29 April 2013 and 29 April 2014. On each occasion a petition of concern was presented in relation to the motion requiring the vote to be on a cross community basis. On the second of these occasions, the issue was discussed in relation to the [Marriage \(Same Sex Couples\) Bill: Legislative Consent Motion](#) which made provision for a marriage of a same sex couple from England and Wales to be treated as a civil partnership in Northern Ireland. During the debate the Minister for Finance and Personnel referred to the Northern Ireland Executive's overall policy position on marriage of same sex couples stating:

Not everyone in the Assembly will support the policy position on same-sex marriage or the decision to treat English or Welsh same-sex marriages as civil partnerships. However, the Assembly — this is important — has rejected the option of same-sex marriage on two occasions. The Executive have clearly accepted that there is no consensus in favour of same-sex marriage and so has agreed the motion, which I commend to you.

Nevertheless, the issue was debated for a third time by the Assembly on 29 April 2014 on a motion proposed by members of Sinn Féin:

Marriage Equality

That this Assembly notes that other jurisdictions on these islands have moved forward with equal marriage rights for same-sex couples; believes that all couples, regardless

of gender or sexual orientation, should have the same legal entitlement to marry and to the protections, rights, obligations and benefits afforded by the legal institution of marriage; supports freedom of religion by allowing religious institutions to define, observe and practise marriage according to their beliefs, granting them the freedom whether or not to conduct same-sex marriages; calls on the Minister of Finance and Personnel to introduce legislation to guarantee that couples of any sex or gender identity receive equal benefit; and further calls on the First Minister and deputy First Minister to ensure that all legislation adheres to the Executive's commitments to protect equality for all.

The Minister for Finance and Personnel responded to the motion stating:

Legal developments in other jurisdictions may be of interest, but they are not determinative of the law in this jurisdiction, and it is wrong to suggest that they should be. Differing laws in different jurisdictions is the very essence of devolution. It is for this Assembly and this Assembly alone to determine. It is not for any other Parliament or Assembly in these islands, and certainly not for any judge in a court, to determine the law of Northern Ireland.

Gay rights campaigners and human rights and equality bodies which include [Amnesty](#), the Rainbow Project, and the [Equality Commission for Northern Ireland](#) have strongly supported the introduction of legislation for marriage of same sex couples in Northern Ireland. Following the Assembly's third vote on the issue, Patrick Corrigan, director of Amnesty International, said:

Politicians in Northern Ireland who continue to block marriage rights for same-sex couples are like latter-day King Canutes, trying in vain to hold back the tide of equality.

A recent survey of a representative sample of the Northern Ireland public, the [Northern Ireland Life and Times Survey](#) (2012) reported that attitudes towards same sex relationships are softening in [Northern Ireland](#) with over half (58%) now in favour of same sex marriage compared with around a third (35%) in 2005.

Many churches and religious groups continue to express strong opposition to the introduction of marriage for same sex couples. On the eve of the debate, Catholic bishops in Northern Ireland published an [open letter](#) to all MLAs urging them to reject the latest private members' motion.

3 Legislative framework

3.1 England and Wales

The [Marriage \(Same Sex Couples\) Bill](#) (the Bill) was introduced into the House of Commons on 24 January 2013. The House of Commons voted on whether the Bill should receive a second reading, with the Bill being supported by 400 votes to 175. This was a free vote, and voting behaviour did not follow party lines.

The Bill was carried over to the 2013–14 session and completed its passage through the House of Commons on 21 May 2013. It was introduced into the House of Lords on the same day. The Lords also voted on whether the Bill should have a second reading – on that occasion the Bill was supported by 390 votes to 148.

The Bill completed its passage through both Houses on 16 July 2013 and received Royal Assent on 17 July 2013, becoming the [Marriage \(Same Sex Couples\) Act 2013](#) (the M(SSC) Act 2013).

The M(SSC) Act 2013 has 21 sections and 7 schedules and amends a number of other Acts, including the *Marriage Act 1949*. Some of the provisions have been given effect through secondary legislation. Much of the legislation was brought into force with effect from March 2014, with the first marriages of same sex couples taking place on 29 March 2014. Some other provisions are expected to be implemented later this year.

In summary, the M(SSC) Act 2013 legalises marriage of same sex couples. When the relevant provisions are brought into force, it will also enable civil partners to convert their civil partnership into a marriage, without imposing any obligation to do so, and will allow married transsexual people to change their legal gender without having to end their existing marriage (as they must do at present). The England and Wales Act also provides for three reviews:

- a review relating to marriage according to the usages of belief organisations such as humanists;
- a review of the *Civil Partnership Act 2004*; and
- a review of the relevant differences in survivor benefits in occupational pension schemes and the costs and other effects of eliminating differences in treatment between same sex and opposite sex couples in legal relationships.

A [House of Commons Library research paper](#) (RP13/08, 31 January 2013) prepared for second reading in the Commons of the *Marriage (Same Sex Couples) Bill* sets out background information about the Bill and the process of policy development which preceded it, together with a selection of views both in favour of, and against, the legislation.

The Explanatory Notes published with the Act provide detailed information about specific provisions: [Marriage \(Same Sex Couples\) Act 2013 Explanatory Notes](#).

3.2 Scotland

The legislative process operates differently in Scotland compared to Westminster. Scottish Parliament provides guidance on the passage of Public and other Bills on [its website](#).

The *Marriage and Civil Partnership (Scotland) Bill* was introduced with its accompanying documents on 26 June 2013 and the [Equal Opportunities Committee](#) was designated as lead committee. It completed Stage 1 on 20 November 2013, Stage 2 on 17 January 2014 and was passed at Stage 3 on 4 February 2014. It received Royal Assent to become the *Marriage and Civil Partnership (Scotland) Act 2014* on 12 March 2014. It is envisaged that the Act will come into force by the end of 2014, subject to passing the relevant secondary legislation both at Westminster and at Holyrood. An [implementation circular](#) has been released by the Scottish Government which provides further detail.

Like the equivalent Westminster Act, the Scottish 2014 Act makes provision for the marriage of persons of the same sex and gender change by married persons and civil partners. However, it deals with a wider range of marriage and partnership related issues for both opposite sex and same sex couples. These include:

- putting belief celebrants on the same footing as religious celebrants;
- allowing the religious and belief registration of civil partnerships - previously, ceremonies to register civil partnerships could only be civil in nature (although it is possible to have a

religious or belief ceremony to mark the partnership, any such ceremony would not be recognised by the state);

- relaxing the rules about where a civil marriage may be solemnised so that it may take place at any location agreed by the registrar and the couple (except religious premises);
- introducing the possibility of qualifying requirements for religious and belief bodies so that they can be authorised to solemnise marriage or register civil partnership;
- making the terminology used to deal with the marriage of “closely related persons” gender neutral e.g. changing “mother” and “father” to “parent”; (there is no change to the types of relationship which prevent a couple from marrying);
- making bigamy a statutory offence in relation to marriage of both opposite sex and same sex couples and abolishing the current common law offence; (in England and Wales, bigamy is already a statutory offence);
- automatically authorising Church of Scotland deacons to solemnise opposite sex marriage;
- repealing the defence for wives against the crime of reset (handling stolen goods).

SPICe briefings [SB 13/51](#) and [SB 14/10](#) provide more detail on the Bill as introduced and as amended at stage 2. SPICe has also produced an overall Bill summary highlighting key details of its passage. Members of the Scottish Parliament were allowed to consider this Bill as a matter of conscience and not along party lines. The main changes to the Bill during scrutiny focused on the category of civil partnerships which can change to a marriage in Scotland, the use of gender neutral language in the marriage ceremony, removal of the “spousal veto” for a full gender recognition certificate and the provision to allow certain long term transitioned people to access simpler evidence requirements to apply for full gender recognition.

During Stage 1 the Parliament was made aware of a discrepancy between the number of electronic consultation responses received by the Scottish Government on the draft Bill and the number sent in through the Scotland for Marriage campaign. More information is available in the correspondence available on the Parliament website.

As noted above, the M(SSC) Act 2013 contains provisions to review civil partnerships and pensions. The Scottish Government has also announced plans to consider issues relating to reform of civil partnerships, (see section 6 of this paper for further information). Information on the pension review and how it relates to Scotland is contained in section 4.6 below.

3.3 What is happening in Northern Ireland?

The legislation relating to marriage in Northern Ireland is the *Marriage (Northern Ireland) Order 2003*. It was introduced following a review of marriage law in Northern Ireland in 2000 which noted that there were twenty seven statutory instruments relating to marriage in Northern Ireland at that time, the earliest of which dated from the mid-19th century. The *Marriage (NI) Order 2003, Section 40 (Schedule of Repeals)* sets out a list of statutory instruments relating to marriage in Northern Ireland at that time. As detailed in an [Explanatory Memorandum](#), the review, led by the Law Reform Advisory Committee for Northern Ireland, was referred by the former Secretary of State for Northern Ireland, the late Dr Marjorie Mowlam, on the grounds that the current law on marriage was anomalous, complex, outdated and possibly discriminatory. The Committee recommended modernisation and reform of the legislation. The *Marriage (NI) Order* was passed in 2003

repealing much of the earlier legislation and updating, simplifying and consolidating its provisions.

In [reply](#) to an Assembly Question addressed to the First and deputy First Minister on 17 September 2012, Junior Minister Bell confirmed that there were no plans to change the definition of marriage in Northern Ireland. Since then, three private members' motions proposing the introduction of marriage for same sex couples have been defeated.

4 Marriage of same sex couples in England and Wales and in Scotland

4.1 Where can same sex couples marry with a civil ceremony?

England and Wales

As with marriage of opposite sex couples, same sex couples may marry with a civil ceremony at the following venues:

- a register office;
- approved premises (such as a hotel or stately home).

Marriage may take place elsewhere under a licence from the Registrar General if one of the parties is seriously ill and not expected to recover. In relevant circumstances, marriages for detained or housebound people are permitted at their residence.

Scotland

A civil marriage ceremony may currently take place in a registrar's office or at another "approved place" as laid out in the *Marriage (Scotland) Act 2002*. It may be solemnised by a registrar or an assistant registrar who has been authorised by the Registrar General for that purpose. When the Scottish 2014 Act comes into force, it will become possible in Scotland for both opposite sex couples and same sex couples to have a civil marriage ceremony at any place agreed by the registrar and the couple. However, it will still not be possible to have a civil marriage ceremony in religious premises.

4.2 Are religious marriage ceremonies permitted for same sex couples?

England and Wales

Church of England and Church in Wales

The M(SSC) Act 2013 **does not** allow clergy of the Church of England or Church in Wales to solemnize marriage of same sex couples according to their rites. It provides specifically that Canon law of the Church of England is not contrary to the general law which enables same sex couples to marry, by virtue of providing only for marriage of opposite sex couples (as Canon B30 does). Same sex couples do not have the right to have their marriages solemnized by clergy of the Church of England or Church in Wales.

The M(SSC) Act 2013 provides a process by which the Church in Wales can request and obtain legislative change to allow marriages of same sex couples according to its rites if it wishes to do so.

Other denominations and religions

Same sex couples may marry with a religious ceremony according to the rites of another religious organisation only if that organisation has "opted-in" to marry same sex couples and their building has been registered for the purpose of marriage of same sex couples.

Marriage of same sex couples may be conducted in a registered religious building, if, when the application for the registration of the building is made, the relevant governing authority of the religious organisation gives written consent to marriages of same sex couples, that is, “opts in”.

There is no restriction on venue for marriage in accordance with the rites of the Quakers or of the Jewish religion but the relevant governing authority must give written consent for the marriage of same sex couples.

Marriage of same sex couples in accordance with the rites of religious organisations which have “opted-in” (but not in accordance with the rites of the Church of England or Church in Wales) may also take place:

- in armed forces chapels (once the relevant provisions come into force);
- at the place of residence of the house-bound or detained;
- elsewhere under a licence from the Registrar General if one of the parties is seriously ill and not expected to recover (the Registrar General may authorise a religious marriage of a same sex couple only if the relevant governing authority has consented to marriage of same sex couples).

Scotland

Scottish Ministers may only prescribe a religious or belief body (such as humanists) so that its celebrants are authorised to solemnise marriages of same sex couples if the body requests this (“opts in”) and if Ministers are satisfied that the body meets the “qualifying requirements” which will be set out in regulations.

In Scotland, the process being put in place to authorise celebrants to solemnise marriages of same sex couples is based on the existing system. The exception to this is that Church of Scotland celebrants will not be automatically authorised to solemnise marriages of same sex couples. (Currently, for opposite sex marriage, Church of Scotland ministers are authorised by way of specific reference to that office in section 8 of the 1977 Act). Other religious bodies will either be prescribed by statutory instrument or will be able to nominate persons to be registered. The Registrar General also has the power to grant temporary authorisation to individuals to solemnise a marriage or marriages.

4.3 Can a religious organisation refuse to conduct marriages of same sex couples?

Both Acts enable religious organisations and individuals to refuse to conduct a religious marriage ceremony for a same sex couple.

England and Wales

The M(SSC) Act 2013 provides that religious organisations and individuals cannot be compelled to:

- solemnize, attend, participate in, or consent to the conduct of, marriage of same sex couples;
- undertake an “opt-in activity” (listed in a table – the Government’s Explanatory Notes summarise the list as meaning “the various types of activity relating to the decision of a religious organisation to opt-in to solemnizing marriage of same sex couples”); opt-in activities would include, for example, applying for the registration of a building; or

- refrain from undertaking an “opt-out activity”, which is defined as an activity which reverses or otherwise modifies the effect of an opt-in activity (section 2).

Scotland

Section 12 of the 2014 Act clarifies for the avoidance of doubt that nothing:

- imposes a duty on any religious or belief body to request to be prescribed so that their celebrants can solemnise marriages of same sex couples;
- imposes a duty on any religious or belief body to nominate members under section 9 of the 1977 Act to be empowered to solemnise marriages of same sex couples;
- imposes a duty on any person to apply for temporary authorisation under section 12 to solemnise marriage of same sex couples;
- imposes a duty on a celebrant approved to solemnise marriages of same sex couples to solemnise such marriages.

4.4 Amendments to the *Equality Act 2010*

Schedule 23 to the *Equality Act 2010* already has exemptions for religious and belief bodies from equality requirements relating to sexual orientation. These exemptions apply where it is necessary to comply with the doctrine of the organisation or to avoid conflict with the strongly held convictions of a significant number of its followers. In light of the introduction of marriage of same sex couples, it was determined that amendments were required to the Act to provide further protections for celebrants and persons who may perform associated wedding activities.

The M(SSC) Act 2013 includes a number of amendments to the *Equality Act 2010* regarding exceptions from the “prohibition on discrimination in the provision of services and the exercise of public functions”. It states that it is not unlawful discrimination under that Act for an individual or religious organisation to refuse to carry out a number of specific activities where the reason is that the marriage taking place is that of a same sex couple.

However, many of the amendments present in the M(SSC) Act 2013 are specific to marriage law in England and Wales and relate to functions which do not exist in Scots marriage law. As such, the [Scottish Government agreed with the UK Government](#) that, as a consequence of the Scottish 2014 Act, additional amendments would be required to reflect the situation in Scotland.

[Draft amendments have been produced along with a draft Explanatory Note](#) which will form part of an Order under section 104 of the *Scotland Act 1998* to be taken forward at Westminster upon the passing of the Scottish 2014 Act. (It was noted that the drafting could change before the section 104 Order is laid at Westminster). The draft amendments are aimed at protecting religious and belief bodies, celebrants and others either carrying out religious and belief functions at marriage and civil partnership ceremonies, or who have control over premises where such ceremonies would take place, from potential discrimination claims.

The Scottish Government is considering, with the UK Government, whether the amendments also need to cover cases where a denomination opts in, makes it clear that some of its celebrants will not take part, and there is then a legal challenge against the denomination on this issue.

4.5 Wider protections and freedom of speech

In relation to wider protections regarding freedom of speech, section 14 of the Scottish 2014 Act provides that the introduction of marriage of same sex couples does not affect the exercise of rights of anyone to freedom of thought, conscience, religion and freedom of expression which have been conferred by the European Convention of Human Rights or the exercise of any equivalent rights conferred on anyone by the common law.

In addition, the Lord Advocate for Scotland published [prosecution guidance](#) which stated that “views expressed or comments made in relation to same sex marriage in ways which do not incite hatred or violence towards a particular person or group of people and which do not cause or intend to cause public disorder will not be the subject of criminal prosecution.” Those in opposition to the Bill [questioned the practical value](#) of this guidance and highlighted that the M(SSC) Act 2013 contained provisions to this effect within the legislation.

4.6 What other similarities exist?

Interpretation of other legislation

Both Acts specify that terms such as “marriage” are to be interpreted in law to include references to marriage of same sex couples and same sex spouses. The interpretation provisions will also apply to documents (such as wills) executed after the relevant provision comes into force, unless a contrary intention is specified. The provisions are largely similar in effect, and each Act has an order making power to disapply them.

Pensions

England and Wales

For the purposes of State Pension and occupational pension rights, the M(SSC) Act 2013 treats same sex married couples in the same way as civil partners (and not in the same way as opposite sex married couples).

The M(SSC) Act 2013 provides for a review of the differences in survivor benefits in occupational pension schemes between opposite sex couples and same sex couples in legal relationships. The review will look at the effect of eliminating differences in treatment because of sexual orientation. A report of the review is to be published by 1 July 2014. There is an order-making power to enable a change in the law if, on consideration, the Secretary of State thinks a change is needed in order to reduce or eliminate differences between survivor benefits. The review will extend to Scotland, as well as to England and Wales, and any subsequent order may amend Scottish legislation.

A House of Commons Library standard note, [Pensions: civil partnerships and same sex marriages](#) (SN 03035, 16 July 2013) provides further information.

Scotland

Pensions are reserved to the UK Parliament. However, the Scottish Government has devolved powers in relation to certain public sector pension schemes.

As in England and Wales, the Scottish Government intends to treat same sex spouses for these schemes in the same way as civil partners. However, as mentioned above, the planned UK Government review will extend to Scotland and will inform the Scottish Government’s future approach to the schemes which fall under its devolved responsibility.

Adultery and non-consummation

For any couple, whether same sex or opposite sex, the existing definition of adultery (sexual intercourse with a person of the opposite sex outwith of marriage) will continue to apply. If a spouse in a marriage (whether same sex or opposite sex) considers that his or her spouse

has committed sexual infidelity which is not covered by the definition of adultery, he or she may seek a divorce on the basis that the marriage has irretrievably broken down due to unreasonable behaviour.

Non-consummation or permanent or incurable impotence will not be a basis on which a marriage is voidable (may be annulled) for a same sex couple.

Jurisdiction of last resort

Both Acts amend the *Domicile and Matrimonial Proceedings Act 1973* (dealing with the jurisdiction of national courts to deal with actions relating to marriage of same sex couples – such as divorce and nullity). In each case, the provisions and related secondary legislation provide a “jurisdiction of last resort” in specified circumstances, including, for example, where a couple is unable to end their marriage in another country because that country does not recognise the marriage. The provisions are explained in detail in the Explanatory Notes to each Act.

Consular marriage and marriage on armed forces bases overseas

The M(SSC) Act 2013 allows civil partnerships and marriages carried out overseas by UK consular staff, and through the UK armed forces, to be treated as civil partnerships and marriages in the UK so long as the parties identified with the relevant nation within the UK (Scotland, England and Wales) at the time and details have been sent to the relevant Registrar General.

4.7 What is different?

Humanist marriage, and other belief organisation marriage

England and Wales

At present, in England and Wales, humanist weddings (and marriage in accordance with the procedures of other belief organisations) do not have legal force and the parties must have an additional ceremony (for example, at a register office) for the marriage to be legally valid. The position is the same for opposite sex couples and for same sex couples.

The M(SSC) Act 2013 provides for a review of whether an order should be made permitting belief organisations to solemnise marriages, and, if so, what provisions should be included in the order. The review must include a full public consultation. Amendments to both primary and secondary legislation could be made by order. A report of the outcome of the review must be published by 1 January 2015.

Scotland

Since 2005, the Registrar General for Scotland has authorised humanists as marriage celebrants. This means that couples who wish to have a humanist marriage ceremony recognised by the state can do so.

Humanist celebrants are currently authorised temporarily under section 12 of the *Marriage (Scotland) Act 1977*. The Scottish 2014 Act makes provision so that, in future, there will be two types of marriage ceremony in Scotland; civil and “religious or belief”. This will ensure that belief celebrants will have the same status in marriage legislation as those from religious bodies. Section 12 outlines the definition of belief body which, for the purposes of the Act, means “an organised group of people, the principal object (or one of the principal objects) of which is to uphold or promote philosophical beliefs and which meets regularly for that purpose”. Belief marriage will be open to both same sex and opposite sex couples.

Parental consent

In England and Wales, 16 or 17 year olds generally require parental (or other) consent to marry (with some limited exceptions). In Scotland a person can marry at age 16 without parental consent. This is the case for marriage of opposite sex couples and same sex couples.

5 Can a civil partnership be converted into marriage?

Both Acts enable civil partnerships to be converted into marriage, but do not impose any obligation on couples to do so. In each case, the detail of the procedure will be set out in regulations. When a civil partnership is converted into marriage, the civil partnership will end on the conversion and the marriage will be treated as having subsisted since the date the civil partnership was formed.

In Scotland it will be possible for civil partners to convert their civil partnership into marriage through an administrative route or to have a marriage ceremony. In England and Wales, in its response to the consultation on equal civil marriage, the Government stated that couples would be able to have a ceremony upon conversion if they wished to do so, but that this would have no legal effect and would be similar to existing ceremonies allowing couples to renew their vows.

There is a difference between the two Acts in the definition of civil partnerships which may be converted into marriage:

- In England and Wales, this means civil partnerships registered in England and Wales. In addition, the Secretary of State has power to make regulations establishing a procedure for the conversion of civil partnerships formed outside the UK under an Order in Council made under the *Civil Partnership Act 2004* (registration at British consulates etc or by armed forces personnel), where England and Wales is the relevant part of the UK for the purposes of registration of the civil partnership under the Order.
- In Scotland, similarly, the definition covers civil partnerships registered in Scotland and civil partnerships formed outside the UK under an Order in Council (as in relation to England and Wales) where Scotland is the relevant part of the UK for the purposes of registration of the civil partnership under the Order.

However, the Scottish 2014 Act also enables Scottish Ministers to extend, by order and following consultation, the category of civil partnerships which can be converted to marriage in Scotland. The [Explanatory Notes](#) specify that “this power could be used to enable civil partners in a partnership registered outwith Scotland to change their civil partnership to a marriage in Scotland”.

Helen Grant, Junior Minister for Equalities, [commented](#) on the difference between the two Acts:

There would be potential difficulties in converting one relationship into another in a jurisdiction that lacks the power to end the original relationship. That could leave people in two legal relationships with different rights and responsibilities attached to them in different jurisdictions, and two relationships to sort out should an issue arise between them. As the shadow Minister knows, marriage and civil partnerships are devolved matters, so the approach taken in Scotland is a matter for them, and I will look carefully at their consultation.

6 Will it still be possible to register a civil partnership?

It will still be possible for a same sex couple (but not an opposite sex couple) to register a civil partnership.

The M(SSC) Act 2013 provides for a review of civil partnership, including a full public consultation (which was launched in January 2014 and closed in April 2014).

Among other things, the consultation in England and Wales asked for views on:

- abolishing the legal relationship of civil partnership and converting existing civil partnerships into marriages;
- stopping new civil partnerships being registered but retaining existing ones; and
- opening up civil partnership to opposite sex couples.

Similarly, the Scottish Government has announced [a review](#) which will assess the operation and future of civil partnership in Scotland. It has also committed to a public consultation following the parliamentary passage of the Scottish legislation.

7 How does each Act treat married applicants for gender recognition?

In summary, both Acts will amend the *Gender Recognition Act 2004* (the GRA) to enable a person to change their legal gender without ending their existing marriage (as they must do at present) and many of the provisions are similar in intent. Both Acts also provide a “fast-track” procedure for transsexual people who transitioned a long time ago.

However, the provisions in each Act differ to some extent, particularly in relation to whether the consent of the spouse of a married applicant is necessary.

Both Acts will enable an existing “protected marriage” to continue where one or both parties change their legal gender and both parties wish to remain married. A “protected civil partnership” will be able to continue if both parties gain legal recognition in their acquired gender at the same time and wish to remain in their civil partnership. In these cases a full gender recognition certificate could be issued to the applicant.

A full gender recognition certificate may be issued if the applicant’s spouse has given a statutory declaration of consent (or the applicant is unmarried and not in a civil partnership). An interim gender recognition certificate will be issued if (among other reasons) the applicant’s spouse does not consent to the marriage continuing.

The GRA provides a procedure for a person to apply for a gender recognition certificate. The consequence of receiving a gender recognition certificate is that the applicant is treated in the eyes of the law as being of their acquired gender. In order to receive a full gender recognition certificate, a transsexual person must be unmarried and not in a civil partnership. In England and Wales, an applicant who is married or in a civil partnership is issued with an “interim” gender recognition certificate, and must end their marriage or civil partnership before they can get a full gender recognition certificate.

However, there is a difference in the two Acts about what happens next, where the applicant for gender recognition is married and his or her spouse does not consent to the marriage continuing after the issue of a full gender recognition certificate.

England and Wales

In England and Wales, as at present, the issue of an interim gender recognition certificate will enable either party to seek annulment of the marriage, following which a full certificate can be issued.

In February 2014, in a [written answer](#) to a Parliamentary question, Justice Minister, Simon Hughes, said that the Government had no plans to review the GRA. He refuted the suggestion that there was a “spousal veto” at present and said that there would be no such veto when the M(SSC) Act 2013 was implemented. The Minister said that, as now, all applicants for gender recognition would be able to obtain their legal gender change regardless of their spouse's views. Where the couple did not wish to stay married, the Panel would, as now, issue an interim gender recognition certificate which would enable either party to initiate proceedings to annul their marriage and the applicant to obtain their full certificate.

Scotland

However, in Scotland, a married applicant, who does not have written spousal consent, and who therefore obtains only an interim gender recognition certificate, will be able to apply to the Sheriff Court to convert to a full certificate. The application must be made within six months of the issue of the interim certificate.

The Sheriff must notify the transsexual person's spouse that the application for the full certificate has been made and that it has been granted. That will give the spouse the grounds, at any time in the future, to seek a divorce.

When gender recognition is granted, a revised marriage certificate would be issued only with the spouse's agreement. Continuity of the marriage would not be impacted by the issue of the full gender recognition certificate.

Helen Grant has [commented](#) on the difference between the two provisions:

The hon. Lady pointed out that the Scottish Parliament has removed the spousal veto, and asked why we do not do the same. As I have said, gender recognition is a devolved matter and accordingly, the Scottish Parliament has determined the way it wishes to proceed. We of course recognise the concerns expressed by some members of the trans community in the various debates on the Act. Let me make it clear that I do not believe there is any such thing as a spousal veto. There can be delays, but if an application is made for gender recognition, an interim gender recognition certificate will be issued, which will be sufficient to allow the partner wanting to end the relationship to petition for nullity or for divorce. Ultimately, it will be for a court to make the application dissolving the union, at which point a full gender recognition certificate will be issued.

