



Northern Ireland  
Assembly

Committee for Finance and Personnel

# OFFICIAL REPORT (Hansard)

Marriage (Same Sex Couples) Bill:  
DFP Briefing

29 May 2013

# NORTHERN IRELAND ASSEMBLY

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**Members present for all or part of the proceedings:**

Mr Daithí McKay (Chairperson)  
Mr Dominic Bradley (Deputy Chairperson)  
Mrs Judith Cochrane  
Mr Leslie Cree  
Ms Megan Fearon  
Mr Paul Girvan  
Mr John McCallister  
Mr David McIlveen  
Mr Mitchel McLaughlin  
Mr Adrian McQuillan  
Mr Peter Weir

**Witnesses:**

Ms Laura McPolin	Department of Finance and Personnel
Mr Oswyn Paulin	Department of Finance and Personnel

**The Chairperson:** I welcome Oswyn Paulin and Laura McPolin to the meeting. Would you like to make a brief opening statement before we move into questions and answers?

**Mr Oswyn Paulin (Department of Finance and Personnel):** Thank you, Mr Chairman. I will be very succinct in my comments, not least because the Committee has just received a briefing from the Assembly research team on the Marriage (Same Sex Couples) Bill, and, as I understand, that research is to be sent to the Department for written response. I will not attempt to answer the questions posed by the researcher, but members may want to put questions to Ms McPolin and me as a result of that briefing. I do not propose, subject to the directions of the Committee, to rehearse the background to the Bill or its main objectives. I wish to say at the outset that the Department recognises that there are differing views on same-sex marriage. Those views have been fully heard during two Assembly debates, the most recent on 29 April. Members of the Committee will be familiar with the arguments for and against change.

The Executive have agreed that a legislative consent motion should be pursued for a number of the Bill's provisions. I would, therefore, like to focus on the practical implications of the proposed motion rather than the general arguments for and against same-sex marriage. As members will be aware, a legislative consent motion is the means by which the Assembly signifies its consent to the Westminster Parliament legislating in the territory of the Assembly's responsibilities. The provisions that will be covered by the proposed legislative consent motion were clearly set out in the briefing paper that issued to the Committee.

Ultimately, three issues fall to be addressed. The first is the need to provide for how English and Welsh same-sex marriages will be treated in Northern Ireland. Paragraph 2 of schedule 2 to the Bill clearly states that such a marriage will ordinarily be treated as a civil partnership. The law on civil partnerships is well established and understood, and I think that it makes sense to apply that law to English and Welsh same-sex marriages in the same way as we apply it to recognised overseas same-sex marriages, which have also been recognised here, as a result of subordinate legislation, as civil partnerships.

The second is the need to ensure that there are sufficient powers to deal with any transitional or consequential matters that may arise. It is proposed that the order-making power in clause 15 will apply to Northern Ireland, and that will secure the necessary flexibility for dealing with any ancillary issues. Clause 16 sets out the practical arrangements for the making of secondary legislation.

The third is the need to ensure that there is a good fit between the new rules in England and Wales on gender recognition and the law on such matters in Northern Ireland. Schedule 5 largely focuses on the proposed new arrangements for England and Wales. Crucially, however, it also allows the correction of errors and for applications to a court to quash the grant of a gender recognition certificate obtained by fraud.

The Department believes that the proposed legislative consent motion is appropriate and well targeted. However, we would welcome the Committee's view on what is proposed.

**The Chairperson:** Thank you, Oswyn. Is it fair to say — the researcher referred to it — that, when it comes to legal and practical issues, including pensions, that apply to those working in the public or private sector, the one exception is the case of a woman who is in a same-sex marriage because her husband has changed gender? Is that the only difference between civil partnerships and marriage?

**Mr Paulin:** The pensions position is complex. It might be better if we dealt with that by way of correspondence rather than producing an answer today.

**The Chairperson:** You must have a general idea of whether there are one or two issues or myriad issues.

**Mr Paulin:** I think that there are quite a number of issues.

**Ms Laura McPolin (Department of Finance and Personnel):** The explanatory notes to the Bill set out in some detail the pension arrangements. Very often, the comparisons made are between opposite-sex marriages and civil partnerships. There are some differences, and, as previously indicated, they are largely historical. The reality is that civil partners are treated very much the same as widowers, and, in fact, it is older women who have different pension entitlements. The explanatory notes set out how that operates.

When the Bill comes into operation, same-sex couples will be treated in the same way as civil partners, and their pension rights will be the same. The difference is not so much sexual orientation; it is gender-related and historical. The paragraphs in the explanatory notes are very complex. They cover the state aspect of pensions and occupational pensions, and they give some worked examples. Those explanatory notes went to the Lords and run from paragraphs 117 to 132.

**Mr Paulin:** I do not know whether members have the explanatory notes to the Marriage (Same Sex Couples) Bill. There are four pages of detailed references to pensions, which would, I suggest, repay careful reading.

**The Chairperson:** I think that it would be useful if the Department could provide to the Committee in writing a synopsis of those differences in layman's terms. Obviously, there was a lot of reading in the House of Commons research. It can be quite complex as well. If we could get that in layman's terms for the Committee, it would be very useful.

**Ms McPolin:** I do not think that the reference to layman's terms applies to pensions. Those paragraphs have it down to as basic a level as they can, and even they have had to do some worked examples. In all honesty, I do not think that we could summarise it any better than the explanatory notes have endeavoured to do. By all means, we will look at the issue.

**Mr Mitchel McLaughlin:** Would a laywoman's description be better?

**The Chairperson:** I stand corrected.

**Ms McPolin:** I do not want to raise expectations.

**Mr Paulin:** Do not enter into that territory.

**Ms McPolin:** Whole books have been written on pensions.

**Mr Weir:** Thank you for your evidence. There are a couple of points that I want to clarify. Is the current recognition of overseas same-sex marriages on the basis of simply applying to any territory or state outside the United Kingdom, or is there a specified list? Some responses to the House of Commons mentioned Canada, Portugal and others. Is that an amended list? How is that amended?

**Mr Paulin:** As I recall, the list is in the Civil Partnership Act 2004. There is order-making power so that an order can be made providing for recognition in the United Kingdom of same-sex marriages or civil partnerships that took place in foreign countries. So if a marriage or civil partnership is contracted outside the United Kingdom, under the Civil Partnership Act, an order can be made recognising marriages or civil partnerships entered into in another country in the United Kingdom.

**Mr Weir:** May I assume that that is done on a national basis?

**Mr Paulin:** Strangely, it is done by the UK Government and the devolved Administration. I cannot remember when the most recent —

**Ms McPolin:** The most recent order was in November 2012.

**Mr Paulin:** So we made it jointly with the UK Government.

**Mr Weir:** Given the publicity on this issue, it seems at least likely, in light of a couple of countries coming on stream, that their number is likely to expand in the next few years. I do not remember anything on that, even by way of secondary legislation, coming through the Assembly. Would it come through here?

**Mr Paulin:** I do not know.

**Ms McPolin:** The order is made by the UK Government with the consent of the Scottish Ministers and the Department of Finance and Personnel (DFP).

**Mr Weir:** So it is simply a question of making a technical change in light of each new country coming on stream, the most obvious and recent being France. New Zealand, I think, was also mentioned.

**Mr Paulin:** The 2012 order added a few countries, and that was not the first time. There was already a list, and it was added to.

**Mr Weir:** Is that done on a case-by-case basis or by annual renewal?

**Mr Paulin:** It would be less than annual.

**Ms McPolin:** That is what I was going to say —

**Mr Weir:** More frequently than annual?

**Mr Paulin:** No, less frequently.

**Mr Weir:** OK.

**Ms McPolin:** They update periodically. Essentially, they look at civil partnerships in other jurisdictions and assess their compatibility with the UK law.

**Mr Weir:** The researcher mentioned that, were the Republic of Ireland to go down this route, it would simply be a question of the list being altered. It is simply a process.

**Ms McPolin:** Exactly.

**Mr Weir:** OK. That is useful.

I have a couple of other points. There was a specific reference — again, I did not quite understand this — to the fact that schedule 2 1(2)(b) talks about specific:

*"cases in which a marriage is not to be treated as a civil partnership by virtue of ... sub-paragraph (1)".*

I was not quite sure what that meant. I know that it gives the Secretary of State the power to make an order, but I was not quite sure what set of circumstances that provision was really intended to cover.

**Ms McPolin:** The UK Government have not indicated the precise circumstances that it will cover, but they wanted to include that power. You are referring to paragraph (2)(b) in Part 1 of schedule 2, which refers to circumstances in which a marriage would not be treated as a civil partnership. The UK Government have said that they do not expect that it will be used and have not been able to elaborate on when they would use it. I think that it is just there to cover unforeseen circumstances.

**Mr Weir:** I appreciate that this was a matter of discussion between the Department and the UK Government. The provision for and change from essentially consequential changes through secondary legislation, which initially required consultation but now requires consent, is another safeguarding mechanism to ensure that the Secretary of State and UK Government would not overstep the boundaries and do something that DFP or the Minister opposed.

**Ms McPolin:** When the legislation was first brought in, it stipulated the consent of Scottish Ministers but a need only to consult DFP. Representations were made to put Northern Ireland on an equal footing with the Scottish Ministers, and that was accepted.

**Mr Weir:** So we would be in the same position as Scotland, from a devolution point of view.

**Mr D Bradley:** Oswyn, your second point related to clause 15. You said that that was a catch-all to deal with any consequential or transitional issues that may arise and that DFP must be consulted before any of these are made. Is that type of clause a normal part of such legislation or is it required here because there is some uncertainty about the effect of this legislation?

**Mr Paulin:** First, consent, rather than mere consultation, is required for DFP, which is the point made earlier. We consider consent to be better than consultation. Transitional arrangements are often set out in full in a Bill, but, because this is such a complex area, they have done it by way of giving power for subordinate legislation to be made.

**Mr D Bradley:** So you are saying that consequentials are usually set out in a Bill.

**Mr Paulin:** They can quite often be, transitional and consequential.

**Mr D Bradley:** There is much uncertainty about the possible implications of the Westminster Bill here.

**Mr Paulin:** I think that there is uncertainty in Westminster about its implications in England and Wales.

**Ms McPolin:** That clause is not specifically for Northern Ireland; it is to cover there. As Ossie said, some of their consequential amendments are included in the legislation, but they want this comfort blanket to ensure that they can go back, as and when required, if they have missed anything or there are any unforeseen ancillary matters that need to be dealt with.

**Mr D Bradley:** May I ask you about adoption, which our researcher mentioned? Take, for instance, a same-sex couple who married and adopted a child in England. If the couple were to move to Northern

Ireland and become part of a civil partnership here, and people in civil partnerships here were not allowed to adopt, what would the status of that child be?

**Mr Paulin:** Adoption policy is not the responsibility of DFP, and we have avoided any mention of adoption for that reason. However, I will try to answer your question. As I understand it, an adoption is a once-and-for-all event. Once a child has been adopted, by a same-sex couple or by people in a civil partnership, that child is treated as their child when they move to Northern Ireland. That is how it will continue: the child will still have the status of being their child, and those parents will be the parents.

**Mr D Bradley:** Is that not an anomaly? People in a civil partnership will have an adopted child, which the law here does not allow.

**Mr Paulin:** Look at it this way: the law here does not allow them to apply to adopt, whereas the law in England and Wales does, so it depends on where you are when you make the application.

**Mr D Bradley:** OK. Are people in civil partnerships in England allowed to adopt?

**Mr Paulin:** I think that they are.

**Mr D Bradley:** Could that lead to people in civil partnerships here going across to England to adopt children and then coming back?

**Mr Paulin:** I think that, first, they would need to have residency and show that they had been resident in an area for a reasonable length of time. There is a big demand for adoption, as I understand it, so that is, I think, an unlikely eventuality.

**Mr D Bradley:** It seems to be an area in which there is some uncertainty.

**Mr Paulin:** There is no doubt that people in civil partnerships here will be eligible to apply for adoption in England if they establish themselves there.

**Mr D Bradley:** Thanks.

**The Chairperson:** On that point, Oswyn, you are saying that, if a same-sex couple who adopt a child in England or Wales moves here, there is still a likelihood that they will be brought to task because there is a deficit in the law here. Do you not think that there could be a legal challenge from somebody opposed to that situation?

**Mr Paulin:** No, I do not see how that could possibly succeed.

**Mr Weir:** In the same way, the law here, at present, is that an unmarried heterosexual couple cannot adopt. Presumably, the analogous position is that of an unmarried heterosexual couple who had adopted in England coming here, but no legal action is taken against anyone in that position.

**Mr Paulin:** Adoption is once and for all. The people concerned become parents, and parents cannot divorce their children, as I understand it.

**The Chairperson:** Has the Department taken legal advice on that?

**Mr Paulin:** On adoption?

**The Chairperson:** Yes.

**Mr Paulin:** I think that we are confident of the position. We are both lawyers.

**The Chairperson:** Are you extremely confident?

**Mr McCallister:** I realise that you are not the lead Department on adoption and that the Department of Health, Social Services and Public Safety is in the process of policy development. Are you

contributing any of your knowledge or expertise or even warning of some of the pitfalls that it might face in introducing its new policy? I know that it is up to the Department to decide what the policy will be, but have you had any input into that?

**Mr Paulin:** There are two aspects of our office. Its major aspect, which covers the Departmental Solicitor's Office and my role, is to provide legal advice and legal services to government: all Northern Ireland Departments, including the Department of Health. We have a small policy role — I say that it is small, but, sometimes, it seems quite large — in civil law reform. Same-sex marriage is part of that responsibility. On a policy basis, we will contribute as a legal office to any request from the Department of Health for legal advice on adoption. As you may be aware, a judicial review was brought by the Northern Ireland Human Rights Commission, and judgement was given against the Department, which has appealed to the Court of Appeal, so that is ongoing.

As far as our policy input into adoption is concerned, we will make the Department aware of what we are doing on the legislative consent motion and the same-sex marriage Bill across the water. Beyond that, I do not think that there is an awful lot for us to do.

**Mr Mitchel McLaughlin:** It is a complex issue but one that is very important when it comes down to individuals or various partnerships and relationships. The High Court judgement is very interesting. I am glad that you explained what has happened because I wondered whether there would be a reaction to it. So that judgement is being appealed.

**Mr Paulin:** It has gone to the Court of Appeal, yes, but that hearing has not taken place yet.

**Mr Mitchel McLaughlin:** That will set down a marker to which there would have to be a response. Its judgement will be binding, will it not?

**Mr Paulin:** Either party could appeal to the Supreme Court.

**Mr Mitchel McLaughlin:** So it could go on for a while. That is germane to the point that I am making. Any society and, perhaps, this one in particular, will have a huge debate on the status of marriage. That is in the context, perhaps, of very sincerely held religious perspectives. The other side of that is making distinctions between civil partnerships and marriage. As well as being something of a bearfeast for lawyers, government have been required — perhaps in light of developments in other jurisdictions — to amend constantly the position and remove some of the original difficulties or obstacles, depending on your perspective. Has it ever been considered that, rather than a process of incrementally aligning the status of civil partnerships and marriage, that should have been our starting point?

**Mr Paulin:** My starting position is that the major change between civil partnerships and today, as far as England and Wales are concerned, is the proposal for same-sex marriage. I am not sure that there was a lot of incremental change in between. England and Wales are moving from one system, civil partnership, to a new system of same-sex marriage. Although civil partnerships will still exist, they will not be available for opposite-sex couples. I do not think that there has been a huge amount of incremental shifting. In England and Wales, the law on adoption has been quite different from ours for quite some time. That has not changed in recent years, not even in response to the Civil Partnership Act. I think that same-sex couples could have adopted in England and Wales before the Civil Partnership Act. I am not sure about that, but I certainly suspect that that was the case.

**Mr Mitchel McLaughlin:** We have a research paper that states:

*"Civil partnership is very similar but not fully identical to marriage. It has been noted that successive UK governments have steadily removed differences between married, cohabitating and same sex couples by, for example allowing single people and same sex couples (in GB) to adopt; extending domestic violence legislation to all couples; calculating benefits by household occupation rather than marital status; and extending occupation rights to partners and parental responsibilities to all categories of persons."*

That is quite a list.

**Mr Paulin:** I would challenge the one about adoption, to be quite honest. I would really like to examine the others as well.

**Mr Mitchel McLaughlin:** It continues:

*"It must be noted however, that whilst single men and women, regardless of sexual orientation can apply to adopt in NI, unmarried heterosexual couples, same sex couples and couples in civil partnerships are not eligible to be considered for adoption in NI."*

It seems to me that that is a position that we are going to be eventually dragged to through the courts.

**Mr Paulin:** That is why I am very hesitant about the adoption issue, because it is not our Department's responsibility.

**Mr Mitchel McLaughlin:** I understand that.

**Mr Paulin:** It is the Health Department's responsibility.

**Mr Mitchel McLaughlin:** My main point is that, starting off cognisant of the very strong and sincerely held religious beliefs about the institution of marriage, and then approaching the issue of civil partnerships on that basis, we have created a situation in which some amazing contradictions are emerging whereby people in what would be regarded as a conventional marriage could, in some circumstances, require a challenge as well because they find that there may be more rights attached to civil partnerships than those that they enjoy. Surely, the easier path is just to ensure that there is no difference whatsoever. People can still hold on to their very sincere moral perspective on the institution of marriage.

**Mr Paulin:** If that is the general view, that can be accommodated through legislation.

**Mr Mitchel McLaughlin:** My question is why we did not consider that at the start. The politicians will have their beanfeast on this as well, but how is it that we have come to this position where we are legislating for difference as opposed to ensuring that no anomalies or injustices are created?

**Mr Paulin:** That question that goes back to the policy behind the Civil Partnership Act 2004. The policy was that there would be differences between marriage and civil partnership — that was quite deliberate; those would be small differences, but the main difference was that it was not going to be a marriage.

**Mr Mitchel McLaughlin:** We are legislating now in 2013, nine years later, and the British Government have moved, on occasion, to remove some of the anomalies that were inbuilt originally, so everybody, except perhaps us, has been learning lessons since 2004.

**Ms McPolin:** There will still be anomalies. A same-sex marriage will not be the same as an opposite-sex marriage. There are differences. There will be differences in relation to adultery and differences in relation to non-consummation, and that is partly to do with the historical way in which the law has incrementally developed. Some of the concepts that are appropriate for opposite-sex couples are not being applied to same-sex couples. It is not the case that the UK Bill will remove all differences because, quite clearly, it is not. Some of those differences are on the pension side, and they will be perpetuated. It is a matter of the way in which the law evolves. You mentioned earlier how the law has changed on domestic violence: it has extended protection to people who are unmarried, and so on. That has happened incrementally, but the vast majority of civil partnership legislation, by and large, applies in the same way as it applies to married couples. There are very few differences.

**Mr Mitchel McLaughlin:** I have heard the argument made, particularly by my colleagues on the opposite side of this table, that marriage is about procreation, for instance. We do not need to legislate for that fact of nature and humankind. I do not think that we need to legislate for difference, because that is what leads us into difficulty. There are certain things that, if you have same-sex marriage, will naturally follow, and they do not need legislation. However, if we legislate for difference, we are walking into a legal and human rights minefield — unnecessarily, in my view. That is not making any judgement on the individual religious beliefs that people may or may not have.

**Mr Paulin:** Yes; we are in a legal minefield, and we seem to be perpetually in one, no matter what we do. There will be people who bring challenges. Maybe I oversimplify what you say, but I take you to



be saying, "Why do we not just have a Bill in Northern Ireland that states that it shall be no longer necessary for marriage to be between a man and woman?" It would make no distinctions at all, and everything would be the same.

**Mr Mitchel McLaughlin:** We would have Jim Allister looking to join this Committee if I were to take that position. I suggest that we respect the fact that people hold very strong and sincere religious views on the institution of marriage. That does not need legislation; it is just a fact. However, there are people of different sexual orientations, different religious perspectives, and perhaps none, but they have the same civil and human rights as everyone else. Why do we legislate for difference if it perpetuates conflict and tension dynamics? I take a broader position than simply arguing that there is no difference between marriage and civil partnership. However, the difference is man-made, to be sexist about it. That is unnecessary in my view.

**Mr Paulin:** The difference arises because it has been the law for a very long time that marriage is between a man and woman. That has historically been the position for centuries, if not for thousands of years. Legislation in England and Wales is changing that so that there is virtually no difference between a same-sex marriage and an opposite-sex marriage.

**Mr Mitchel McLaughlin:** It is changing globally as well, is it not?

**Mr Paulin:** It is changing in various countries and in various states in the United States, but it is not changing throughout the entire United States. Different things are happening in different places.

**Ms McPolin:** Australia rejected the move. It is not as though it is a clean sweep, and the European Court of Human Rights recognises that there is no consensus at a pan-European level.

**Mr Mitchel McLaughlin:** With regard to the law on slavery and the law that did not let women vote, we changed our minds. Sometimes, you have to just think these things through.

**Ms McPolin:** Law evolves, of course. However, with regard to the point about religious convictions, I do not think it is enough just to say that it is a matter for individual convictions. The UK Bill recognises that Parliament has to legislate in that regard to ensure that proper protections are in place for people of faith. It is really a question of getting that balance. The law constantly deals with tension in human situations between individual rights and views, and it tries to achieve an accommodation. That is what is happening here.

**Mr Mitchel McLaughlin:** Yes, but if you legislate for difference — this is where the lawyers have a field day — it opens up the argument about advantage and disadvantage. I have no difficulty with legislation for protection as long as it applies to everyone and it does not create advantage or disadvantage.

**Ms McPolin:** If we legislate tomorrow for same-sex marriage, there will still be cohabiting couples who will ask, "What about us?" There will always be legal challenges. That is the nature of the beast. There is an assumption, and I say this as a lawyer, that the law cures all. It does not. If you put something in black and white, people will still argue about what it means, so you will never eradicate challenges. That potential will always be there. That is what lawyers do: they argue about things, spot gaps and challenge. That is one way in which the law evolves, and you will never change that.

**Mr Paulin:** It is also what legislators do. They make distinctions, and if there are distinctions, there is the potential for someone to say, "I am unhappy with that and I will go to court."

**Mr Mitchel McLaughlin:** This is my last point. I suggest that the whole evolution of civil partnerships came down to that inherent element of the definition of marriage, which related to property rights. People who did not intend to get married or did not have the option of getting married began to consider that. They were anxious to make provision for each other in the event of separation, death, or whatever. Out of that, we started this process of civil partnerships, which, in my view, is still an evolving and incomplete process. We are coming to it after a lot of other societies and legislators, and I do not know whether we are drawing on the type of lessons that experience has taught others.

**Ms McPolin:** The only thing I will say in relation to civil partnerships is that it is important to understand that a lot of people in same-sex civil partnerships actually appreciate that system; they do not want something else. That is why the British Government are retaining the option of civil

partnership; they are not removing it. I view the law in this way: there are different arrangements for different people, and they can avail themselves of what they wish, within the context of their legal system.

**The Chairperson:** On a point of clarification, I heard it said on 'Question Time' last week that the law in relation to marriage did not mention gender or sex until it was changed in the 1970s. Is that right?

**Mr Paulin:** No, I do not think that is right, because the classic example is what Lord Lyndhurst said in 1830. He said that marriage is understood as a relationship between a man and a woman — I have forgotten the exact quote.

**The Chairperson:** The legislation did not actually refer to gender.

**Mr Paulin:** Legislation was not dealing with that, because it was already embedded in common law. In the history of the British Isles, say from the 5th century, marriage was exclusively a Church matter. All marriages were conducted by the Church. If two men presented themselves to a priest, saying that they wanted to get married, it would not have happened. Civil marriage was introduced in the 19th century, when people could get married outside the Church. That is my recollection. Civil marriage developed, and we have seen what has happened since. There was not a lot of legislation about marriage until divorce came in, and the dissolution of a valid marriage by the civil courts came to England and Wales only in the 1860s, and it was not introduced in Northern Ireland until the 1920s. It has a very complicated history, but divorce was by Act of Parliament. In fact, individuals would come to Stormont and say that they wanted their marriage dissolved, and a special individual Bill would have been passed. That was the case up to about 1936. There were a number of those private Acts.

It is a long history, but legislation is not the root of our law on marriage. The root is found in ecclesiastical law — canon law and Church law.

**Mr D McIlveen:** Hopefully, this will be a very quick question. Laura, you mentioned a proposal around the changes in the definition of consummation. Is that correct? I am asking for a very deliberate reason. For those of us who take a particular position on this issue, the accusation is levelled that it is doing us no harm; that it is not changing anything, and that we should live and let live. Those are the arguments that are put forward. However, quite frankly, if there were to be a change in the definition of consummation, that does change the definition of marriage for me, as a heterosexual person.

**Ms McPolin:** No. I was explaining that there will be differences in relation to same-sex marriage as compared with opposite-sex marriage. A heterosexual can list non-consummation as a reason for having a marriage declared void. That would not be available to a same-sex couple. That is only in the context of same-sex marriages: the concept does not arise. The reason given by the UK Government is that that will be dealt with under unreasonable behaviour, so they are not introducing non-consummation as a reason for voiding the marriage. Therefore, it is not changing the definition of heterosexual marriage and the expectation around consummation in relation to that.

**Mr D McIlveen:** Forgive me for having to ask another question, but how would the issue of consummation be dealt with for a lesbian couple?

**Mr Paulin:** If one member of a lesbian couple came to court and said that their same-sex marriage — this is all about England and Wales, of course — has never been consummated and they wanted it declared null and void, the court would say that it could not deal with that because that does not arise as there is no requirement for their relationship to be consummated. Legislation is clear in the current Bill.

**Ms McPolin:** There is a different definition of adultery. In a same-sex relationship, adultery will be defined in terms of a male having a relationship with a female.

**The Chairperson:** Has the legislative consent motion been subject to equality screening or an equality impact assessment (EQIA), or will it be?

**Mr Paulin:** It will be.

**The Chairperson:** A full EQIA?

**Mr Paulin:** I think it is a matter of judgement as to whether a full EQIA is necessary.

**Ms McPolin:** The Civil Partnership Act is determined to be equality compliant, so I do not envisage any difficulties.

**The Chairperson:** When will that take place?

**Mr Paulin:** Very shortly.

**The Chairperson:** In the next couple of months?

**Mr Paulin:** It should be before that, because the hope is to get it through the Assembly before it rises.

**The Chairperson:** Oswyn and Laura, thanks again.