



Northern Ireland
Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Marriage (Same Sex Couples) Bill: Rainbow
Project Briefing

5 June 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 Peter Weir

Witnesses:

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|----------------------|-----------------|
| Mr Gavin Boyd | Rainbow Project |
| Mr Matthew McDermott | Rainbow Project |
| Mr John O'Doherty | Rainbow Project |

The Chairperson: I welcome the Rainbow Project to the meeting. John, Matthew and Gavin, you are all very welcome. John, do you want to give us a brief overview before we go to questions and answers?

Mr John O'Doherty (Rainbow Project): Yes, Chair. We will not spend too much time on it. There are some substantive points that we want to make in our submission, but we will provide a general overview of the submission as a whole. Obviously, our main concerns relate to the consistency of rule of law across the constituent regions of the United Kingdom.

Looking first at adoption, the law in England, Scotland and Wales allows civil partners to adopt jointly. The same right does not exist in Northern Ireland. That right will not exist. Although, currently, in Northern Ireland, it is recognised that married couples have the right to apply to adopt, those who are married in England and Wales under the proposed Bill would not be in a position to adopt here in Northern Ireland under the legislative consent motion (LCM).

With regard to civil and religious ceremonies; religious freedoms exist in England, Scotland and Wales, but not here in Northern Ireland, where civil partnerships are not allowed to have any reference to religion — songs, music, prayer or anything that relates to religion — or to be held in religious venues. That still exists in Northern Ireland. That was addressed as part of civil partnerships in England, Scotland and Wales, and has also been addressed in the proposed Bill on marriage equality.

The Chairperson: Can you clarify that point? Is that where there is consent from religious organisations for that?

Mr O'Doherty: Yes. That does not exist in Northern Ireland. Interestingly, the Minister of Enterprise, Trade and Investment was unaware of that, and I wonder how many of her Executive colleagues are unaware that those religious freedoms do not exist in Northern Ireland.

Furthermore, currently in Northern Ireland, someone who is married has to have a divorce to undergo gender reassignment, or, if they are in a civil partnership, their civil partnership must be dissolved before they can access a gender reassignment certificate. Should they choose to stay in that relationship, they would then have to enter into either a civil partnership or marriage on the counter side of that depending on the gender reassignment and the gender of their partner. My colleague Gavin will talk a bit about internal borders.

Mr Gavin Boyd (Rainbow Project): We have been very clear from the start that when the UK Government decide to extend the definition of marriage to include same-sex couples, we do not believe that it is within the competence of the constituent regions of the UK to have differential definitions of that right. We do not think that it will be acceptable to domestic or European courts that a person could be married in one part of the state and not married in another. It throws up huge constitutional anomalies that will almost certainly be challenged in court and are not resolved by the Bill.

Mr O'Doherty: Finally, my colleague Matthew will speak a little bit about the possible economic impact of the passing the LCM. That is not in our written submission.

Mr Matthew McDermott (Rainbow Project): I will be very brief, and members can explore the issue, if they wish, in questions. As legislators and public representatives, it is incumbent on you all to consider any potential economic impacts of having a different position in Northern Ireland from that in England, Scotland and Wales on equal marriage. It is quite clear that lots of multinational companies recognise the value of equality and diversity. In fact, a lot of them have come out openly specifically on the issue of same-sex marriage. Lord Browne, the former chair of BP, recently wrote an article about the potential benefits of same-sex marriage for business, and Michael Bloomberg, the Mayor of New York, did the same. There is absolutely no doubt that equality and diversity generally has massive business impacts on staff retention, recruitment, staff satisfaction levels, staff turnover levels and things like that. The attractiveness of Northern Ireland, if it is different from England, Scotland and Wales, has to be considered in the context of foreign direct investment. If we do not have a system that allows multinational companies that wish to invest in the UK to transfer staff who have same-sex partners because we have a different law on marriage equality, that will have negative impacts. That is a small example of some things that could happen when we have different systems. We could probably explore that issue later through questions, if members wish.

The Chairperson: Matthew, are there any examples of where multinational companies' directors have taken decisions based on the laws in an area?

Mr McDermott: Absolutely. You just have to go to any search engine and look for that. Rafts of companies openly talk about the benefits of progressive laws for transferring staff. Companies that are multinational have bases but work in many countries. They talk about the need to have a seamless system for the transfer of their staff. Companies such as IBM, Ford, Coca-Cola, Pepsi and Apple, to name a few, all talk about the benefits of having those systems and about the consideration that they give in their board meetings to moving to countries when they do not have those systems in place.

The Chairperson: We raised the issue of adoption with the Department last week, and it was at pains to point out that it is a matter for the Department of Health, Social Services and Public Safety. It also said that the legal process of adoption is that, post adoption, the child is regarded as having been born to the adoptive parents; that the Children NI Order 1995 was amended to take account of civil partnerships; and the fact that the adoptive parents will be treated as civil partners should not present any difficulties. It made the point that if the children are adopted in England and Wales and come here, that would still apply.

Mr O'Doherty: We concur with that assessment. Additionally, it is worth noting on the issue of adoption that if a person in a same-sex couple chooses to apply to adopt as an individual, they have

every right to do so and to go through that process. Post-adoption, once that decision has been made, they would be in a position to enter into a civil partnership, if they so choose, without any impact on the adoption process, as that would be complete. The difficulty we have in Northern Ireland is that those who wish to jointly adopt or who are in a civil partnership are not in a position to jointly apply for adoption.

Mr D Bradley: Thanks for your presentation, gentlemen. You said that one of the main problems you have with the LCM is that it would mean people who are considered married in one part of the UK would be unmarried, as it were, if they moved to another part, because there are only civil partnerships here. What sorts of problems do you foresee that creating for couples?

Mr Boyd: We think that it throws up enormous administrative problems throughout numerous different aspects of people's lives, such as when they are considering house insurance or car insurance, or completing any type of official administration that requires you to state your marital status. Someone who was married in England, Scotland or Wales would be compelled not to tick the married box on a form and to tick the civil partnership box, but who would enforce that? How would that be rectified if someone decided not to tick the civil partnership box because they are actually married?

Mr D Bradley: In a lot of dealings with companies, and so on, and even with government agencies, people are required to state their marital status. They will have done that in England, but they would possibly have to undo it if they moved here.

Mr O'Doherty: Sorry, Deputy Chair, it is also the case that people could be accused of submitting wrong information by referencing that they believe that they are married in Northern Ireland and are not in a civil partnership. There could be a punitive impact on individuals or couples should there be any review of those applications, whether they are for insurance, tax or any other issues.

Mr D Bradley: What are the possible resolutions to that problem?

Mr McDermott: Extend same-sex marriage to Northern Ireland.

Mr D Bradley: Are there any others?

Mr O'Doherty: I think that there are aspects of the Bill that address a number of the issues that we highlighted, including the issue of gender reassignment and religious freedoms for those who wish to carry out either civil partnerships or same-sex marriages. I think that a lot of those are addressed in the Bill but not in the LCM. Also, the issue of adoption has already been addressed in England, Scotland and Wales but not here. Those who get married in England, Scotland and Wales and travel here would lose the ability to apply to be adoptive parents, which, again, is not dealt with as part of the LCM. However, that is subject to an ongoing case.

Mr D Bradley: So there would not be parity here?

Mr O'Doherty: No, absolutely not, and that would lead to a possible economic impact.

Mr D Bradley: Some parties here are very strong on promoting parity. I see Paul smiling. OK; that is grand. Thanks very much.

Mr Weir: It is good to see the value of devolution. Gentlemen, I know that this first point may seem reasonably obvious, but I just want to get clarity. From what you said, your clear preference is that the full Act would apply to Northern Ireland and that Northern Ireland would be on the same legislative basis as England and Wales. I presume, therefore, that your belief is that the Assembly should say no to the legislative consent motion, because, from your perspective, it falls short, or are you saying that you would prefer this to be passed but that it should not move on? I just want you to clarify your position.

Mr O'Doherty: There are particular shortfalls that should be addressed regardless of whether same-sex marriage becomes lawful here in Northern Ireland. Those shortfalls that we identified are real issues being lived through by real people, and they need to be addressed by the Assembly. That is our ultimate position. The issue of same-sex marriage in Northern Ireland is additional to those other points that we raised. So, although we would like to see equal marriage available across the United

Kingdom, we believe that the other issues that exist for residents in Northern Ireland should be addressed a part of the LCM because they are addressed in the Bill.

Mr Weir: Right. I am trying to interpret a little bit from what you have said in connection to that. From your point of view, in the direct recognition of same-sex marriage, the LCM would fall short, and you feel that there are other inadequacies within the LCM. Ultimately, from a procedural point of view, a legislative consent motion has to be passed or not passed. It is not something to which amendments can be put down. To clarify, is your ultimate position that you want to see the LCM passed or not passed?

Mr O'Doherty: On that position, we want to see the LCM not passed, because of the impact it will have on residents here in Northern Ireland.

Mr Weir: That is OK; I just wanted clarity on that. You mentioned the economic issues. I take a certain level of exception to, or disagreement with, what you said. I think it is a fairly tenuous point, at best. You mentioned the wider context of firms indicating that the overall context of law is of relevance to them, but, specifically, we are at the stage at which 14 or 15 countries have same-sex marriage. You probably know the up-to-date figures more accurately than I do; I do not know whether the 14 included France. Presumably, some of the other countries that do not have it might have it in transit, shall we say. I assume that some states in the United States have it, and some do not. You talked specifically about different companies taking attitudes. From the point of view of foreign direct investment, can you give us any single example of a company that, because of the absence or presence of legislation for same-sex marriage, has shifted country?

Mr McDermott: Yes, there are a couple of points from what you said. First, to be clear, I was making the point of companies deciding or using that as a criterion within the context of the United Kingdom. With one constituent part of the United Kingdom being different from the other three parts, there is no doubt that those criteria will be applied as legitimate criteria, among a list of others —

Mr Weir: I would question to some extent whether the fact that same-sex marriage is available in an area would be particularly high in the pecking order when it comes to a company's foreign direct investment. Surely, you have to concede that?

Mr O'Doherty: To look at the Bill on the issue of same-sex marriage, exclusively, is wrong, because other legislative shortfalls, which will impact on family rights and family life for residents here in Northern Ireland, will continue to exist here. So, it is not just in relation to the availability of marriage. It is about the broader rights that will exist for families and individuals here in Northern Ireland and the impact that they can have in a company's decision.

Mr McDermott: You are right in the sense that where a company puts that particular criterion to make a decision to invest will differ among companies. The point I am making is that it definitely is a criterion, and a lot of companies say that it is, just as there are lots of other criteria. The point I am making is that the Government of Northern Ireland identify all the criteria here, such as investment in infrastructure, people, skills and knowledge. Equal rights for same-sex attracted people is something that the Government here have said they are ruling out even looking at. That is the point I am making. It is a criterion. It will impact on a company's decisions to invest in Northern Ireland, particularly considering the changes in the rest of the UK. Where that criterion lies is up to the individual company.

Mr Weir: On the specifics, because a number of countries have adopted it, can you point us to a company that has made any announcement that it is shifting its location because of same-sex marriage, one way or the other, to a country where it is available or away from a country where it is not available?

Mr McDermott: You are missing my point. No company will ever give one reason for moving anywhere in the world. It is a criterion among a number, but it is one that this Government have said they are unwilling even to consider.

Mr Weir: OK. Chair, it is probably fair to say that a point — albeit a separate point — has been made on both sides.

The Chairperson: Things are moving apace in the South. How soon do you foresee equal marriage being introduced there? It goes back to the economic point as well, because when people get married, they want to have a big day with a big function and it costs a lot of money. If they cannot do it in Belfast, they will go to Dublin; if they cannot do it in Derry, they will go to Letterkenny; and if they cannot do it in Newry, they will go to Dundalk. All those areas will suffer to some degree from a loss of trade.

Mr O'Doherty: It is difficult to put a time frame on that in the UK or the Republic of Ireland at this stage. We agree that the economic impact, as well as the other broader impacts being considered as part of any Bill that would be passed in the South of Ireland, would create the same issues around parity and rights for people who are resident in Northern Ireland.

The other issue that needs to be raised is the concern that decisions that are, effectively, being taken by this LCM — including issues around religious freedoms in relation to civil partnerships, which were addressed only through the introduction of civil partnerships at Westminster — have not been given consideration by the Assembly or the Executive.

Mr Boyd: If and when the Republic decides to legislate for same-sex marriage, Northern Ireland will be the only jurisdiction in Europe west of Germany that does not recognise same-sex marriages. It will put a black spot on Northern Ireland in the way in which European countries look at us.

The Chairperson: How many European countries have adopted same-sex marriage?

Mr Boyd: I think there are nine. There is a clear and growing consensus among European countries, particularly those that are EU members. Although the European Court is loath to get ahead of a majority of states, consensus is growing. We are confident that, inevitably, the European Court will find a right to same-sex marriage in the convention.

Mr McCallister: John, you tied in the difference in family laws and advocated a position of voting against the LCM. You would have to accept that the other issues that you defined, particularly regarding adoption, are either being addressed through court cases or by Minister Poots, who is pursuing an adoption Bill. Granted, coming from him, it is unlikely to include adoption rights —

Mr Weir: You reckon?

Mr McCallister: — but it is just a guess. I am sure that his colleagues could give us more information about that.

Mr Mitchel McLaughlin: You might call it an educated guess.

Mr McCallister: It would be a fairly well-educated guess.

There is a process in train, shall we say, possibly to address some of those rights, rather than delay things. I am sure that that is the right place to take the fight to. You may differ on that point.

Mr O'Doherty: It is a difficult point and it is a difficult question to answer. One of our main concerns is to do with the fact that decisions that would be made, effectively, by passing the LCM and which had not been given consideration by the Assembly or the Executive would create difficulties for us in deciding whether to support it. It would enforce positions that had not been considered by the Assembly.

The Chairperson: To summarise, then, what is your position on the LCM?

Mr O'Doherty: Our position is that the LCM does not meet the essential criteria for residents in Northern Ireland.

The Chairperson: OK. Thank you all very much.