Department of Finance
An Roinn Airgeadais
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FROM: **CLAIRE TAYLOR**
DOF DALO

DATE: **APRIL 2024**

TO: **PETER HALL**
COMMITTEE CLERK

REFERENCE NUMBER GM-1080-2024

AMENDING THE LAW ON MARRIAGE AND CIVIL PARTNERSHIP

Summary

Business Area:	DSO—Civil Law Reform
Issue:	The paper at Annex A, *Amending the Law on Marriage and Civil Partnership*, provides an update and background on the Finance Minister's policy intentions regarding a number of potential reforms relating to the law on marriage and civil partnership.
Restrictions:	None.
Action Required:	Committee to note ahead of scheduled attendance by DSO officials on 17 April 2024.
Officials Attending:	Michael Foster, Head of Civil Law Reform Martin Tyrrell, Policy Advisor, Civil Law Reform

BACKGROUND

The Finance Minister, Dr Caoimhe Archibald MLA, has agreed in principle to legislate to amend the law on marriage and civil partnership in respect of belief marriage and minimum age. The Minister wishes to place belief marriage on an equal footing with religious marriage and raise the minimum age from the present 16 to 18. This decision follows public consultation in 2021-22 and a written statement to the Assembly (July 2022) by the previous Finance Minister, Conor Murphy MLA, in which he indicated his preference to legislate on these issues. Minister Archibald wrote to Matthew O'Toole MLA, Chair of the Assembly Finance Committee, to advise of her decision to legislate and that DOF officials were available to provide briefing on this policy area.

The Finance Committee had separately scheduled a briefing by DOF officials on developments in the law on marriage and civil partnership for 17 April 2024.

The Committee meeting of 17 April provides a welcome opportunity to provide briefing in line with the Minister's proposal and at an early stage in the legislative process.

KEY ISSUES

Belief marriage—legally binding marriage by people who subscribe to a non-religious belief system such as humanism. The current marriage law—The Marriage (NI) Order 2003, supplemented by the Marriage Regulations (NI) 2003—as drafted, recognises two types of marriage, religious and civil, but not non-religious belief marriage. In the *Smyth* case, in 2017, the High Court and the Court of Appeal agreed that the current law, by not providing for belief marriage, discriminated against humanists and other non-religious believers. Following these judgments, belief marriage has been provided under temporary arrangements pending legislative change. Consultation indicated strong support for this change and little opposition.

Minimum age for marriage and civil partnership. At present, people aged 16 and 17 can marry or form a civil partnership conditional on parental consent or equivalent. In any year, only a small number of marriages in this jurisdiction (and, to date, no civil partnerships) involve people under 18. The UN Committee responsible for the UN Convention on the Rights of the Child advocates a global minimum age of 18. This

has been widely supported, including by key local stakeholders and, in recent years, a new minimum age of 18 has been introduced in the south and in England and Wales. Consultation indicated near unanimous support for change in this jurisdiction.

Independent celebrants. Independent celebrants operate commercially and provide a marriage ceremony that is literally ceremonial, i.e. with no legal status. The current marriage law, as noted, recognises religious and civil marriages only and, in addition, does not permit legally binding marriages to be provided for profit. Independent celebrants are therefore excluded from providing legally binding marriages. Consultation indicated no strong support for change.

NEXT STEPS

The Minister wishes to introduce a Bill to amend the current law on marriage and civil partnership in Year 2, 2024-25, conditional on Executive agreement. A policy paper for consideration by the Executive is currently being finalised.

CLAIRE TAYLOR
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Annex A – ***Amending the Law on Marriage and Civil Partnership***

ANNEX A

Amending the Law on Marriage and Civil Partnership

Introduction

1. This paper provides a brief update on the Finance Minister's policy intentions regarding the following three issues relating to the law on marriage and civil partnership.

   i. Belief marriage—legally binding marriage by people who subscribe to a non-religious belief system such as humanism. The current marriage law—The Marriage (NI) Order 2003, supplemented by the Marriage Regulations (NI) 2003—as drafted, recognises two types of marriage, religious and civil, but not non-religious belief marriage.

   ii. Minimum age for marriage and civil partnership. At present, people aged 16 and 17 can marry or form a civil partnership conditional on parental consent or equivalent. In any year, only a small number of marriages in this jurisdiction involve people under 18. (In 2022, for example, the most recent year for which information is available, there were 39 marriages involving people under the age of 18, a small fraction of the total—some 8,600). To date, no civil partnerships have involved a person aged 16 or 17.

   iii. Independent celebrants. Independent celebrants operate commercially and provide a marriage ceremony that is literally ceremonial, i.e. with no legal status. The current marriage law, as noted, recognises religious and civil marriages only and, in addition, does not permit legally binding marriages to be provided for profit. Independent celebrants are therefore excluded from providing legally binding marriages.

The Law on Marriage and Civil Partnership

2. The Marriage (NI) Order 2003, supplemented by the Marriage Regulations (NI) 2003, governs marriage in this jurisdiction. The law on marriage and civil partnership is the policy responsibility of DOF. Day to day responsibility resides with Civil Law Reform Division (CLRD), a division of the Departmental Solicitor's Office (DSO). The Registrar General and the General Register Office (GRO) are responsible for the delivery and implementation of the 2003 Order.

3. The Marriage (NI) Order 2003 was originally drafted to enable two types of marriage— religious and civil. Under the Order, the preliminaries to marriage such as the notice to marry and the marriage schedule are identical regardless of whether the couple prefers a religious or a civil marriage ceremony. It is only when these common, preliminary stages have been completed that different procedures and rules begin to apply depending on whether a religious or a civil marriage is intended.

4. In 2019 and 2020, regulations were introduced enabling: same sex civil marriage; opposite sex civil partnership; same sex religious marriage (where the religious body opts in and the officiant agrees); and the conversion of same sex civil partnerships to marriages and opposite sex marriages to civil partnerships.

Belief Marriage

5. In 2017, the judgments in the High Court and the Court of Appeal in the case of *Smyth* (2017 NIQB 55 and 2018 NIQB 25) obliged Government, on grounds of equality of treatment, to legislate to place belief marriage on the same legislative footing as religious marriage. A humanist couple had challenged the fact that, under the marriage law, they could not have a legally binding humanist ceremony. They alleged that this violated their human rights under the European Convention on Human Rights (ECHR), specifically Article 9 (freedom

of thought, conscience and religion) and Article 14 (freedom from discrimination). The Courts agreed.

6. As a result, it is the view of the Department that the current marriage law will need to be amended so that it treats belief groups in the same way as it currently treats religious groups and thereby give effect to the Courts' judgments. In the interim, and pending legislative amendment, humanist marriages have been taking place here on the basis of temporary arrangements. The most recent of these was introduced by the then Finance Minister Conor Murphy MLA in 2020 in order to minimise the risk of further discrimination against belief groups and their adherents. Following the precedent of Scotland, whose marriage law is similar to our own, the Minister opted to read aspects of belief marriage into the 2003 Order.

7. There have been more than 2,600 belief marriages since 2020.

Minimum Age

8. Our current minimum age for marriage and civil partnership has been criticised by organisations such as the United Nations Committee responsible for the UN Convention on the Rights of the Child (UNCRC), which favours a global minimum age of 18. It has also been criticised by local stakeholders such as the NI Commissioner for Children and Young People (NICCY). These and others have suggested that marriages by under-18s are more likely to be forced and that a 16 or 17 year old, through being in a marriage, could miss out on important life chances, notably education. As girls are markedly more likely to marry than boys, potential negative impacts of this kind are more likely to affect girls.

9. Others, however, have disagreed, noting that there is no evidence that any marriages here involving people under the age of 18 have been forced nor any evidence that people who have married before the age of 18 are missing out or have missed out on life chances. Some, moreover, have questioned the

appropriateness of increasing the minimum age for marriage and civil partnership to 18 while leaving the age of consent for sexual intercourse at 16.

10. The Dublin Government raised the minimum age in the south to 18 in 2019 and, by supporting a Private Members Bill, the Westminster Government did the same for England and Wales in 2022.

Independent Celebrants

11. Finally, independent celebrants seek, as noted, the right to provide legally binding marriages on the same commercial basis on which they currently provide non-binding ceremonies. This would necessitate amendment of the marriage law to enable legally binding marriage ceremonies to be provided for profit.

12. It is sometimes suggested that it is unequal treatment that religious and belief groups and the GRO can charge a fee for performing marriage ceremonies but independent celebrants cannot. The main difference, however, is that religious and belief groups and the GRO are not commercial organisations making a profit. Any fees they charge for performing marriage ceremonies are intended to cover or offset legitimate costs. Religious groups, moreover, do not generally charge a fee but may accept donations which go towards covering operating costs.

Consultation

13. The Department carried out a public consultation on the law on marriage and civil partnership in 2021-22. This sought opinion on the three issues discussed above:

    i. The formal inclusion of belief marriage in the marriage law on the same basis as religious marriage. (Given the judgments of the Courts in 2017, consultees were advised that government was obliged to legislate on

this matter and that consultation was therefore being undertaken primarily with regard to the detail of the legislative changes).

ii. Increasing the current minimum age for marriage and civil partnership from 16 to 18.

iii. Whether independent celebrants should be enabled to provide legally binding marriages on a commercial, for profit, basis.

14. Consultation ran from 15 November 2021 to 18 February 2022. Participants had the option of responding online or by sending in a conventional written submission. The deadline for responses was extended to facilitate a discussion with the Rights and Equality Committee of the Youth Assembly in March 2022 and to allow stakeholder groups that had yet to respond to consider submitting their opinions.

15. There were 61 online responses, the majority (54) of which came from individuals. Organisations that responded online included the Church of Ireland and NI Humanists. Four independent wedding celebrant businesses and a body representing independent wedding celebrants also responded online.

16. Seventeen written responses were received, all from organisations. These included the Presbyterian and Catholic churches, NI Humanists, the National Secular Society, NICCY, NIHRC and the Family Education Trust. Of the 17 who submitted a written response, only NI Humanists had also responded online.

17. CLRD also met with NICCY, the NI Human Rights Commission, NI Humanists and the Youth Assembly to discuss the issues raised in the consultation. Of these, the first three named subsequently submitted written responses to the consultation while the Youth Assembly provided a transcript of the discussion.

Consultation Findings

18. Consultation indicated strong support for raising the minimum age to 18 and including belief marriage in the current marriage law but there was less clarity on the question of independent celebrants.

Belief Marriage

19. The following were the main findings:

i. 70% thought that belief marriage should be formally included in the marriage law.
ii. 71% thought that the Registrar General should have the same say over the suitability of belief groups to perform marriage ceremonies as he currently has over religious groups.
iii. 53% thought that formal criteria should be used to assess the suitability of belief groups to perform marriages.
iv. 72% thought that such criteria should apply to religious and belief groups.

Minimum Age

20. The following were the main findings regarding minimum age:

i. Online respondents were almost unanimous in their support for increasing the minimum age to 18 (95%) as were those who responded in writing and mentioned this particular proposal.
ii. 70% favoured a policy of non-recognition for marriages or partnerships involving under-18s that were made in other jurisdictions.
iii. 76% supported criminalisation of the adult organisers of marriages and partnerships where one or both parties was aged 16 or 17.
iv. 91% thought that there was a risk that a marriage or civil partnership by people under the age of 18 might be forced.
v. 89% agreed that 16 and 17 year olds that entered into a marriage or partnership risked missing out on educational and other opportunities.
vi. 87% were concerned that ours might be the only jurisdiction on these islands that permitted under-18s to marry or make a civil partnership.

Independent Celebrants

21. The following were the main findings:

    i. 60% favoured a change to the law to allow independent celebrants to perform marriage ceremonies on a commercial basis.
    ii. 54% were content with the current law regarding solemnisation of marriage for profit or gain.
    iii. 55% thought there were risks to permitting marriages to be performed on a commercial basis including a risk to the sanctity of marriage.

22. In view of these results, the then Minister of Finance, Conor Murphy MLA, made a written statement to the Assembly in July 2022 advising of his preference to proceed to legislate on belief marriage and minimum age as soon as the Assembly and Executive were again functioning. The Minister was not, however, persuaded that the law needed to be amended to enable independent celebrants to perform legally binding marriage ceremonies.

23. The Minister's written statement and the final report of consultation findings are available via the following link: https://www.finance-ni.gov.uk/publications/marriage-law-consultation-written-ministerial-statement

Next Steps

24. A Marriage and Civil Partnership Bill is provisionally included in the draft legislative programme as a Year 2 Bill.

25. While the detail of the Bill is still to be developed, the Finance Minister wishes to make the changes listed below. We believe that these changes are

fundamental to amending the relevant legislation in line with the Courts' judgments in 2017 and to give effect to the preferences expressed during consultation.

i. Include belief marriage in the marriage law.
ii. Raise the minimum age for marriage and civil partnership to 18.
iii. Make legislative provision on the recognition of marriages and civil partnerships made outside this jurisdiction and involving parties under the new minimum age of 18.
iv. Criminalise the arrangement of marriages and civil partnerships involving people under the age of 18.

26. In connection with (i), we intend to amend the law to include belief groups on the same basis as religious groups. This will involve bringing a definition of belief group into the legislation and then, where appropriate, amending every reference to religious group so they refer equally to belief and religious groups.

27. The process for accrediting groups and individuals to perform belief marriage ceremonies does not require legislation and will be designed in parallel to making the necessary legislative changes. At present, *new* religious groups seeking to perform marriage ceremonies seek accreditation from the Registrar General who decides on a case by case basis and who also determines, case by case, whether the individual officiants (marriage celebrants) proposed by accredited groups are suitable people to perform the role. This is how belief groups have been accredited under the current, temporary arrangements and it is the Finance Minister's preference that this is how accreditation should proceed going forward.

28. Finally, with regard to independent celebrants, the Minister, like her predecessor, is not persuaded that there is need for change. For independent celebrants to provide legally binding marriages, the current prohibition on providing marriage for profit would need to be removed, and for all celebrants, including religious and belief celebrants. The Minister is of the view that this would disrupt too greatly the architecture of the current marriage law, which has

existed without controversy for more than two decades. Nonetheless, this is an area that will be kept under review.