Marriage and Civil Partnership Bill - Oral Briefing – DSO Committee Hearing – Wed 7 October

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1. The Marriage and Civil Partnership Bill aims to put non-religious belief marriage on the same legislative footing as religious marriage, as required following the judgments in the case of *Smyth* in 2017. Since 2017, belief marriage has been available via temporary arrangements overseen by the General Register Office. The Bill will, in effect, formalise these temporary arrangements. The Bill will also raise the minimum age for marriage and civil partnership from the present 16 to 18. This change has been long advocated by international and local agencies as a means of protecting children from entering into marriages where they, for example, risk coercion and the loss of significant life chances. As girls are more likely than boys to marry at 16 or 17, raising the minimum age should also have a positive gender equality impact.

2. The Assembly Finance Committee has been scrutinising the Bill. As part of this process, it has received written and oral evidence from key stakeholders. The present response reflects, primarily, on the written responses received.

Initial Departmental Comments

3. Six of the stakeholders that presented written evidence were critical of certain aspects of the Bill and suggested how these might be improved. A further three, while broadly supportive, thought it should go further and recognise independent celebrants. The paragraphs below set out the Department's initial thoughts on these comments and proposals.

4. The Marriage Order (NI) 2003 has been in place for more than twenty years. It has in effect been enabling belief marriage since 2017 when, in response to the judgement in the *Smyth* case, the Department enabled legally binding non-religious belief marriages under temporary arrangements pending a change in the law. The Marriage and Civil Partnership Bill will amend the existing law by putting the current temporary provisions for belief marriage—provisions whereby belief marriage is administered in essentially the same way as religious marriage—on a statutory basis. It will therefore make permanent an arrangement that has been in place for close to a decade and that has enabled more than 5,000 belief marriages to take place.

5. Throughout the 23 years that it has been in operation, the 2003 Order has generated no major controversy. It is settled and well-functioning law. In particular, there has been little or no complaint regarding: the appropriateness of the groups or celebrants that have successfully applied to perform marriage ceremonies; commercialisation; or marriage ceremonies that are lacking in dignity. It is therefore our view that any amendment should be made only after careful consideration and in response to clear evidence of need for change. It is for this reason that we have thus far tried to amend the 2003 Order as little as possible, while taking full account of the judgments of the courts in 2017.

6. At the same time, we are not complacent. We note the concerns that stakeholders have raised and will continue to reflect on these and on the solutions that have been proposed. The Minister retains the power to introduce stricter qualifying criteria if there is evidence and broad agreement that these are necessary. Guidance on fees, and on the inclusion of a clause to ensure that marriage ceremonies remain appropriately dignified will be similarly kept under review as the Bill is progressed. The Committee's own conclusions and recommendations will provide further informed opinion that will be considered carefully.

Belief Marriage

7. The Bill aims to place belief marriage on an equal footing with religious marriage in line with the judgments of the courts in 2017. As noted, there is already de

facto equality between belief and religious marriage via the temporary arrangements currently in place. The Bill will formalise these temporary arrangements by amending the legislation accordingly.

8. Most of the religious groups that provided evidence were content with the recognition of belief marriage on equality grounds while emphasising their particular commitment to marriage as a religious institution.

9. Our assessment is that the existing freedom of all religious groups to maintain and promote their view of marriage is unaffected by the Bill. Nor could religious officiants, on account of the content of the Bill, be compelled to perform belief ceremonies or other forms of ceremony to which they object on religious grounds.

10. The Bill currently defines a belief group as '*an organised group of people…the principal object (or one of the principal objects) of which is to uphold or promote philosophical beliefs.*' Several considered this too broad a definition creating some risk that: (a) organisations such as political groups or advocacy groups could avail of it to secure recognition as marriage celebrants; (b) frivolous or eccentric groups might secure recognition, thereby potentially undermining the dignity and solemnity of marriage as an institution, e.g. by holding ceremonies with inappropriate content and/or at inappropriate venues.

11. We note the concerns that have been raised regarding the definition and the suggestions for alternative wording, which we will consider.

Qualifying Criteria

12. Stakeholders who believe that the current definition of a belief group in the Bill is too broad generally advocated both an amended definition of belief group and stricter qualifying criteria for groups seeking to perform marriage ceremonies. Without firmer selection criteria they were concerned that, for example, commercial wedding providers could organise themselves into entirely nominal belief or religious bodies and secure recognition to perform marriage ceremonies. Some stakeholders saw this as potentially detrimental

to marriage as an institution as well as to the wider reputation of legitimate belief bodies. Suggested qualifying criteria included the following:

- Minimum membership (e.g. 50).
- A minimum period in existence (e.g. five years).
- Evidence of a stated purpose beyond marriage solemnisation.
- Evidence of celebrant training and accreditation and of safeguarding procedures.

13. The current process for assessing whether a group and its officiants or celebrants can perform legally binding marriage ceremonies is operated by the Registrar General.

14. The Registrar General requires any religious or belief group applying to perform a wedding ceremony to provide the following information:

    i. Its constitution or statement of purpose.
    ii. Contact details for the organisation, its nominee(s) (for performing marriage ceremonies) and nominating persons.
    iii. A statement from the nominating person and nominee confirming that the body is as described and that the marriage ceremonies that will be carried out will be witnessed and include an appropriate declaration.
    iv. The relevant credentials of the nominee(s).
    v. A copy of the declaratory words to be spoken by the couple during the marriage ceremony.
    vi. A covering letter from an official of the group.
    vii. Evidence of charitable status if relevant.
    viii. Some estimate of membership numbers.

15. This information is intended as evidence of the following:

    i. That the organisation is genuine (not a nominal or paper organisation) and is an appropriate body to perform a marriage ceremony;

ii. That each nominated celebrant is a fit and proper person to carry out legally binding wedding ceremonies;

iii. That the marriage ceremony will include an appropriate declaration in keeping with the requirements of the Marriage (NI) Order 2003 as amended. The Order defines an appropriate declaration as a declaration by the two parties to the marriage in the presence of each other that they accept each other as marriage partners.

16. We believe that this process has been effective to date in preventing the recognition of inappropriate groups, groups that are purely nominal, groups seeking to make a profit, and groups likely to deliver ceremonies corrosive of the dignity of marriage.

17. Regarding stricter criteria, if introduced these would need to apply equally to religious and belief groups seeking recognition. We are amending the 2003 Order to address an inequality following the judgments of the courts in the case of *Smyth* nearly ten years ago. In addressing one inequality between belief and religious groups, we cannot create another by imposing one set of qualifying criteria on belief groups while maintaining the existing arrangements for religious groups.

18. Certain of the criteria that have been suggested may not be straightforward to put in place. For example, requiring groups to have been in existence for a minimum period of time or to have achieved a minimum number of members could raise equality concerns. Such criteria would, as some have noted, inevitably disadvantage entirely new groups. New groups would have to wait five years before they could perform legally binding marriages, which may in itself adversely affect their ability to attract or retain members. There would also be problems for a group that had broken away from an older, longer established body since a breakaway group could be barred from recognition on grounds of its being new and, conceivably, on grounds of its having fewer than the required minimum number of members.

19. It would also be contentious (and potentially challengeable) to reject a group from performing marriages on the grounds that its membership was too small if that group could show that it had as many members as a long-established group that was still actively able to perform marriage ceremonies. There are, for example, some groups that can currently perform legally binding marriage ceremonies but whose membership has fallen over the decades to a few dozen.

20. The introduction of qualifying criteria would necessitate a process of consultation.

Dignity of marriage

21. Some stakeholders who were concerned that frivolous, eccentric or inappropriate applicants might secure recognition under the current definition of belief group and the current assessment procedures proposed that a clause be included in the Bill stating that marriage ceremonies must be dignified. It was proposed, for example, that the Registrar General could issue guidance on what constitutes a dignified ceremony on the understanding that any celebrant who conducted an undignified ceremony would lose their official recognition.

22. Our first thoughts on the inclusion of a dignity clause in the legislation are that it could prove problematic both in terms of finding a usable definition of dignity and the subsequent process of verifying that dignified ceremonies are indeed being conducted.

Fees and Commercialisation

23. Several stakeholders saw a risk of marriage becoming commercialised via belief marriage since it is primarily (though not exclusively) belief celebrants that charge fees to conduct wedding ceremonies. While all accepted that celebrants can legitimately charge fees to cover their costs, there was a concern that significant profit-making could develop over time. It was therefore suggested that celebrants should be obliged to publish their fees, or that fees be kept in line with the fees currently charged by civil registrars

24. We believe that the fees currently charged by belief celebrants and by some religious groups are intended to cover costs. Our evidence of the fees charged (around £650-£750 per wedding) and the number of weddings any individual celebrant is likely to be able to perform in a given year suggests that celebrancy generates a very modest income.

25. We note the proposal that belief and religious fees be kept in line with civil registrar fees. However, our understanding is that the latter are not currently set at full cost recovery.

Independent Celebrants

26. Some stakeholders proposed that formal recognition be given to independent celebrants and that same sex couples, interfaith couples, couples who hold eclectic religious beliefs or religious beliefs that are not formally organised are currently reliant on civil ceremonies. In comparison with religious and belief ceremonies, civil ceremonies offer less choice in terms of ceremony content and venue and this may be discriminatory. Also, interfaith couples and couples whose beliefs are not easily categorizable have currently no opportunity to arrange a ceremony that fully meets their needs and this could be in breach of their rights under the European Convention on Human Rights. Finally, one submission proposed reforms to enable civil ceremonies to be offered in a wider range of venues and locations and with greater flexibility of ceremony content.

27. We note the case that has been made in favour of recognition and believe that it merits further consideration. However, the recognition of independent celebrants would be both novel and controversial and, as such, could not be fast-tracked. It would require primary legislation preceded by close consideration of the issues involved and extensive public consultation. Given this, any work on this issue would need to progress separately from the current amendments and, realistically, not until the next mandate.

Minimum Age and Age of Consent

28. Some stakeholders proposed that, if the minimum age for marriage and civil partnership is to increase to 18, then the age of consent should also increase to 18. It was noted that, if the age of consent is not increased, there is the possibility of legal cohabitation between an adult and a person aged 16 or 17, a situation that could cause similar negative impacts to child marriage—loss of life chances, risk of coercion, etc.

29. The age of consent is a matter for the Department of Justice. It would be for the Justice Minister to decide if legislation to increase the age of consent is required.

30. There is no necessary correspondence between the age of consent and the minimum age for marriage and civil partnership. Until 2008, the age of consent was 17 and the minimum age for marriage and civil partnership, 16.