Marriage and Civil Partnership Bill – Written Submission

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1. The following note seeks to contribute to the discussions surrounding the Marriage and Civil Partnership Bill and in particular the proposal to include non-religious belief marriages within the legal framework of the Marriage (Northern Ireland) Order 2003. It does so following points raised in debate by Eoin Tennyson about the exclusion of independent celebrants from this reform and how this raises concerns from a freedom of religion or belief perspective.

2. I write this as an academic who has researched and published extensively upon the aw relating to religion or belief in England and Wales and in particular has authored *Religion and Marriage Law: The Need for Reform* (Bristol University Press, 2021). I would be happy to send a copy of this book if this would be helpful. Much of this submission is based on an article published as: 'The Rite Time: The Need for Inclusive Marriage Law Reform' (2026, Jan) *Family Law* 101-107.

3. The issue of including non-religious belief marriages has been long debated in England and Wales and subject of several consultations and reports. A further consultation from the UK Government is imminent and, according to a press release, will be based on the acceptance of the need for comprehensive reform of weddings law and the inclusion of humanist ceremonies. That consultation is also expected to include questions as to whether independent celebrants should be included.

4. It is submitted that the discussions surrounding the Marriage and Civil Partnership Bill can benefit from being informed as to the debate in England and Wales and that the reasons for the inclusion of independent celebrants in the reforms upcoming in England and Wales apply equally in Northern Ireland. In short, if the plan is that the Marriage and Civil Partnership Bill will 'future proof' the system then this will not be achieved by excluding independent celebrants.

The Background to Law Reform in England and Wales

5. Reform of the Marriage Act 1949 has long been mooted in England and Wales. The Marriage Act 1949 differentiates between marriages solemnised according to the rites of the Church of England / Church in Wales and marriages otherwise solemnised. This second category of marriages otherwise solemnised includes:
   - civil marriages in a register office or in approved premises;
   - marriages 'according to the usages of the Society of Friends';
   - marriages 'between a man and a woman professing the Jewish religion according to the usages of the Jews'; and
   - marriages in any place of worship registered under the Places of Worship Registration Act 1855 and section 41 of the Marriage Act 1949.

6. Under the 1949 Act, religious wedding ceremonies that are not Anglican, Jewish or Quaker are only legally recognised if it takes place in any place of worship registered under the Places of Worship Registration Act 1855 and section 41 of the Marriage Act 1949. This excludes religions that do not have a registered place of worship or have a tradition of marriages occurring elsewhere.

7. The Act also excludes ceremonies by non-religious belief organisations or independent celebrants. Those weddings are not legally binding unless and until there is a civil marriage in a register office or in approved premises.

8. For the last fifteen years or so, the impetus behind such reform has been the desire to legally recognise humanist marriage ceremonies. Humanist lobbying during the passage of Marriage (Same Sex Couples) Act 2012 led to section 14 of that Act, which required a consultation to occur to consider the matter and created a power that could then be exercised to recognise non-religious belief marriages. This is similar to the provision in the Marriage and Civil Partnership Bill in Northern Ireland. However, the statutory consultation revealed that despite the merits of recognised humanist marriage, this matter raised 'complex issues' concerning marriage law in the round that merited attention. The Law Commission was then eventually charged to consider such matters and concluded in its final report published in July 2022 that

comprehensive reform of the law on getting married was needed and proposed a move from the current legal framework that generally regulates buildings to one that instead regulates officiants.

9. It took over three years for the UK Government response to the Law Commission's final report. A consultation would take place early in 2026 and, according to the press release, 'legislation to reform marriage law will be introduced when parliamentary time allows'.

10. Humanists have been long impatient about the pace of reform. They have argued that the power in the 2012 Act should be used to bring about piecemeal reform in their favour, pending wider reform in the longer term. While the Law Commission was working on the matter, a number of couples who wanted their humanist wedding ceremony to be legally binding challenged the current law in the High Court. In *R (on the application of Harrison) v Secretary of State for Justice* [2020] EWHC 2096 (Admin)., Eady J made it clear that the Marriage Act 1949 breached the claimant's rights under Article 14 of the European Convention on Human Rights (which provides a right not to be discriminated against in the exercise of Convention rights) taken together with Article 9 (freedom of religion or belief) based on the evidence that for many who hold humanist beliefs, 'ceremonies that mark significant life events, such as marriage, provide a close and direct link to the beliefs of the participants' and so the wish to hold such ceremonies to constitute a manifestation of Article 9, which would go further than being within its ambit. Eady J held that this there had been a discriminatory difference of treatment between the claimants and religious comparators. The differential treatment in this case was that 'unlike their religious comparators, a marriage ceremony according to their humanist beliefs will not be legally recognised absent the supervisory presence of state officials' (para 93). The High Court held that the current discrimination was justified only by the 'legitimate aim not to wish to reform the law in a piecemeal fashion when there are further issues arising in this area of social policy (presently being considered by the Law Commission)' (para 107).

11. It is therefore clear legally that marriage law reform in England and Wales must include the legal recognition of humanist wedding ceremonies. The Government's

letter to the Law Commission made it clear that 'the Government commits to remove the difference in treatment of humanists that was found by the High Court in the case of *Harrison*.' However, it is less clear where the line should be drawn. Article 9, after all, protects both religions and beliefs and so if humanism is to be recognised then other belief systems should be too. There is also the question of independent celebrants. The difference between humanist and independent celebrants is as the names suggest: although there are several umbrella organisations to which many independent celebrants belong, independent celebrants do not subscribe to a belief system as such and there is no body equivalent to Humanists UK.

12. The Law Commission ultimately concluded that it was not their task to determine whether humanist and / or independent celebrants should be included but their assignment rather was to recommend and draft a legal framework which could include humanist and / or independent celebrants depending on what the Government decided in respect of this. It appears that the Labour Government has decided that humanist wedding ceremonies should be legally recognised but has not yet decided its stance on ceremonies conducted by independent celebrants. Independent celebrants were not mentioned in the press release but the letter to the Law Commission stated: 'The consultation will likely focus on protecting the dignity of wedding ceremonies, consider whether independent celebrants should be allowed to conduct legally binding weddings and explore the criteria and safeguards for religious and non-religious organisations nominating officiants'.

The Need to Include Independent Celebrants

13. To most couples, independent celebrants are indistinguishable to humanist celebrants offering as they do bespoke wedding ceremonies that at the moment are not legally binding. To legally recognise only humanist ceremonies or ceremonies conducted by a representative of a belief organisation would simply replace one type of discrimination with another. It would not fulfil the stated purpose of a law on marriage that is equitable, clear and simplified.

14. It would also arguably not be human rights complaint. Article 9 does not simply protect recognised belief systems. The points of principle in the *Harrison* case would

apply to those who seek to manifest their beliefs by having a ceremony conducted by independent celebrants. Indeed, independent celebrants alone can provide for inter-faith ceremonies providing a bespoke service that draws upon the different faith and community traditions of both of the parties to the marriage. A humanist ceremony, by contrast, needs to reflect humanist beliefs that some couples will not share.

15. A pragmatic argument for including independent celebrants can be made based on the pressure and importance that would need to be applied upon definitional matters if they are to be excluded. The law has struggled with the definition of belief in other contexts in England and Wales.

How this Could be Achieved

16. The Law Commission of England and Wales' final distinguished between civil marriages (which could include independent celebrants in addition to weddings at registry offices, and approved premises) and belief marriages (which could include humanists and other belief organisations alongside the Anglican Churches and other religions). The basic distinction between the civil weddings conducted by independent celebrants and the belief weddings conducted by religious and belief organisations would be that while religious and belief organisations would be responsible for nominating and monitoring officiants to the General Register Office (GRO), independent celebrants would need to apply individually and be subject to GRO regulation directly.

17. Other jurisdictions have adopted a similar approach. In Jersey there is a nomination system for religious officials while humanists are covered by the rules on civil celebrants. There is also a system of individual application for independent celebrants. The difference between Jersey and the Law Commission proposals is that in Jersey no distinction is drawn between religion and belief. Rather, the distinction is between religion and civil. Article 6 of the Marriage and Civil Status (Jersey) Law 2001 (as amended by the Marriage and Civil Status (Jersey) Order 2018) provides that marriages can only be solemnised by four groups of people: (a) the Superintendent Registrar or a Deputy Superintendent Registrar; (b) a clergyman (defined under section 1 as the Dean of Jersey, a priest or a deacon of the Anglican Church); (c) an

authorized civil celebrant; or (d) an authorized religious official. Article 24A provides that a register must be kept of authorized civil celebrants and authorized religious officials, and the religious organisation that applied for the authorization of the religious official.

18. The effect of these two systems is the same: in addition to allowing authorised officials to be nominated by their organisation, there is an ability for individual applications too. This would allow independent celebrants to be included and will avoid definitional uncertainty as to the definition of belief.

19. This could be achieved in relation to the Marriage and Civil Partnership Bill buy simply adding an ability for individual applications. It might also be beneficial to frame references to 'belief' as 'civil' to avoid definitional issues that will be irrelevant if independent celebrants are recognised.

20. I am happy to discuss this matter further. I can be contacted via email on _____