

# **MARRIAGE AND CIVIL PARTNERSHIP BILL**

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## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by the Department of Finance in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So, where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. The Bill has 2 main purposes. First, it will bring non-religious belief marriages within the statutory framework of the Marriage (NI) Order 2003 (“the 2003 Order”) as amended. This will build upon temporary arrangements that have been in place following the judgments in the *Smyth* case. In that case, a couple with humanist beliefs challenged the decision of the Registrar General to refuse authorisation to a humanist celebrant to conduct a marriage ceremony. The High Court in the case found that the provisions of the 2003 Order were not compliant with the human rights of the couple and determined that belief marriages should be treated in the same way as religious marriages. While the Court of Appeal took a different approach to enable marriages to take place with belief officiants, the former Minister of Finance, Conor Murphy, agreed that temporary arrangements should be observed to permit belief marriages to proceed in the same way as religious marriages. The first purpose of the Bill is to treat non-religious belief marriages in the same way as religious marriages, and Part 1 of the Bill makes the necessary amendments to the 2003 Order.
4. The 2003 Order has worked well for over 20 years providing a universal set of preliminaries for all couples seeking to marry here. The temporary arrangements have seen several thousand belief marriages conducted in the last number of years, again in a manner that appears to have worked well. However, the Department recognises that for both religious and non-religious marriages, it is sensible to future-proof the legislation in a way that will make it simpler to react to any difficulties that could arise in future. Therefore, the Bill adds into the marriage framework the power for the Department to consider additional qualifying requirements for religious and non-religious belief bodies should those be deemed to be necessary in future. Scotland has similar provision in its legislation, though has yet to use the power.
5. The second aspect of the Bill relates to the minimum age of marriage and civil partnership. Currently, it is possible for anyone aged 16 and 17 to marry or form a civil

partnership with the relevant consents in place (usually, the consent of a parent). International research and best practice have demonstrated that child marriage can be detrimental for a range of reasons, and a consultation exercise elicited almost total support for the age to be raised to 18 for both marriage and civil partnership. Part 2 of the Bill makes provision for this and introduces an offence of conduct relating to marriage of persons under 18. This offence will apply to any conduct that causes a child under the age of 18 who is habitually resident in Northern Ireland (or is a UK national who is not habitually resident or domiciled in Scotland) to enter into a marriage in Northern Ireland.

## **CONSULTATION**

6. A public consultation was undertaken by the Department of Finance that ran between November 2021 and February 2022. A total of 79 responses were received. There was almost unanimous support for the proposal to raise the minimum age of marriage and civil partnership to 18. There was a clear majority in favour of legislating to bring belief marriage within the statutory framework.

## **OPTIONS CONSIDERED**

7. Given the degree of support to increase marriage and civil partnership age to 18, the “do nothing” option was not considered. With close to complete support to raise the age to 18, this option was clearly highlighted as the way forward.
8. Regarding belief marriage, the Department did consider the method by which belief marriages could be brought within the statutory framework in order to fully comply with the judgments of the Courts. The consultation discussed, broadly speaking, the “Scottish” model and the “Dublin” model in relation to belief marriage groups. The Dublin model is more proscriptive and places a number of criteria that must be satisfied before such bodies can celebrate marriage. The current marriage framework for religious bodies in this jurisdiction is very similar to the framework in Scotland, where belief bodies were formally added to the legislative scheme in 2014.
9. After careful consideration, the Minister noted that the legislative scheme for religious marriages has largely worked well in this jurisdiction for over 20 years. In order to avoid the type of legal challenge successfully brought before the courts in relation to equal treatment of religious and non-religious belief bodies, the option to provide a more proscriptive scheme for non-religious belief bodies only was not taken. It was also determined that to provide additional requirements for all bodies, whether religious or non-religious, when the scheme appears to work well, was not required at this stage. The Bill therefore replicates the Scottish approach and brings non-religious belief bodies within the current statutory framework.

## **OVERVIEW**

10. The Bill contains 13 clauses, spread over 3 Parts, and a Schedule. The Bill has 2 main purposes. Part 1 of the Bill will cement the inclusion of non-religious belief marriages within the statutory framework of the Marriage (NI) Order 2003 (“the 2003 Order”) as amended. The 2003 Order is thus amended to reflect the formal addition of non-religious

belief bodies to the statutory scheme, which will bring the legislation in line with the relevant case law and the European Convention on Human Rights (ECHR) obligations that have been identified. In addition, provisions have been added to allow the Department to bring forward additional qualifying requirements for all marriages that fall within this part of the 2003 Order (religious and belief marriages) should those prove to be necessary in future.

11. Part 2 of the Bill increases the minimum age of marriage and civil partnership from 16 to 18. It also introduces an offence which will criminalise conduct carried out by a person for the purpose of causing a child to enter into a marriage before the child's eighteenth birthday (with "child" meaning a person aged under 18). It will cover conduct for the purpose of causing a child to enter into a marriage in Northern Ireland, or conduct which occurs at a time when either the person who carries out the conduct or the child is habitually resident in Northern Ireland or conduct which occurs at a time when the child is a UK national who has been habitually resident in Northern Ireland and is not habitually resident or domiciled in Scotland.
12. Part 3 of the Bill contains provisions relating to interpretation, power to make consequential provision and the short title and commencement. The Schedule to the Bill provides for minor and consequential amendments relating to belief marriage, and the age of marriage and civil partnership.

## **COMMENTARY ON CLAUSES**

### **Clause 1: Belief Bodies: registration of members to solemnise marriage**

This clause amends the 2003 Order by adding the words "or belief" into Articles 10, 11 and 13 of the Order, so that references in those Articles to a "religious body", once amended, will be to a "religious or belief body". Articles 10, 11 and 13 make provision in respect of the registration of persons as officiants to solemnise marriages in Northern Ireland. Applications for the registration of persons as officiants are made under Article 10 of the 2003 Order by the bodies of which those persons are members. The effect of the changes made by this clause will be to clarify that religious and belief bodies are treated in the same way for the purposes of the registration of persons as officiants under the 2003 Order. Subsection (2)(d) of this clause also provides for an additional provision relevant to religious or belief bodies making applications under Article 10. That additional provision means that the body making an application may have to meet requirements prescribed by regulations made by the Department relating to the body's eligibility to make an application. This provision will enable the Department to make regulations of this nature should they become necessary in future.

### **Clause 2: Belief bodies: temporary authorisation to solemnise marriage**

This clause makes amendments to Article 14 of the 2003 Order, which allows the Registrar General to grant temporary authorisations to solemnise marriage. References in Article 14 to religious marriage will, once the amendments in this clause take effect, refer to religious or belief marriage. Subsection (4) adds provision into Article 14 which will prevent the Registrar General from granting a temporary authorisation to a person if

the Registrar General considers that the religious or belief body of which the person is a member does not meet any requirements prescribed by regulations made by the Department.

### **Clause 3: Belief marriage: definitions**

This clause makes amendments to various definitions within Article 2 of the 2003 Order which currently refer to religious bodies or religious marriage so that those definitions will refer to religious or belief bodies or religious or belief marriage. Subsection (2)(b) inserts the definition of “religious or belief” body into Article 2. The definition is expanded to reflect the different ways that religious and belief groups organise themselves. While a feature of religious bodies is the activity of meeting regularly to engage in religious worship, belief bodies can and do operate in alternative ways that do not involve similar regular meetings.

### **Clause 4: Belief marriage: further provision**

Subsections (2) to (8) of this clause substitute the words “or belief” into various other parts of the 2003 Order to ensure that current references to “religious marriage” or “religious body” in Articles which haven’t been amended by the previous clauses of this Bill become references to “religious or belief marriage” or “religious or belief body”. The Articles being amended deal, respectively, with matters relating to objections, the marriage schedule, the marriage notice, solemnisation of marriage, the registration of marriage, the Registrar’s power to require delivery of the marriage schedule, and provisions relating to the protection from compulsion in relation to the solemnisation of marriages of same-sex couples. Subsection (9)(a) of this clause amends Article 39 of the 2003 Order to provide that where the Department proposes to exercise its power to prescribe qualifying requirements by regulations (see the commentary provided in relation to clauses 1 and 2), the draft regulations must be laid before and approved by a resolution of the Assembly. Subsection (10) introduces Part 1 of the Schedule which contains consequential amendments relating to belief marriage.

### **Clause 5: Raising of minimum age for marriage**

Subsections (1)(b) and (2)(b) of this clause make amendments to the 2003 Order and the Age of Marriage Act (Northern Ireland) 1951, respectively, to increase the minimum age of marriage from 16 to 18. For the purposes of the 2003 Order, there is a legal impediment to marriage on grounds of age if one or both of the parties to an intended marriage will be under the minimum age on the date of solemnisation of the intended marriage. The 1951 Act provides that a marriage between persons either of whom is under the minimum age to marry is void. The other subsections of this clause make amendments in consequence of the change in the minimum age, including an amendment to remove Articles 22-24 of the 2003 Order, Articles which relate to the relevant consents required for a person aged 16 or 17 to marry.

### **Clause 6: Offence of conduct relating to marriage of persons under 18**

This clause makes amendments to section 16 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 to criminalise conduct carried out by a person for the purpose of causing a child to marry before the child turns 18. For the purposes of the 2015 Act, “child” is defined by section 25 of the 2015 Act to mean a person under 18. Section 16 of the 2015 Act currently deals with the offence of forced marriage, which involves a person using violence, threats or other forms of coercion for the purpose of causing another person to enter into a marriage. The offence inserted by the amendments in this clause will have a wider application and will capture any conduct, as long as the conduct is carried out for the purpose of causing a child to enter into a marriage before the child turns 18. This means that the new offence is not limited to situations which involve violence, threats or any other form of coercion or deception. The offence also applies whether or not the conduct is carried out in Northern Ireland.

The widened offence will cover conduct for the purpose of causing a child to enter into a marriage in Northern Ireland, or conduct which occurs at a time when the person or child is habitually resident in Northern Ireland or conduct which occurs at a time when the child is a UK national who has been habitually resident in Northern Ireland and is not habitually resident or domiciled in Scotland.

### **Clause 7: Raising of minimum age for civil partnership**

This clause makes provision to raise the minimum age for civil partnership from 16 to 18 by making amendments to the relevant provisions of the Civil Partnership Act 2004 (“the 2004 Act”).

### **Clause 8: Civil partnerships registered outside Northern Ireland**

This clause makes amendments to provisions of the 2004 Act that deal with civil partnerships registered outside of Northern Ireland in order to provide that such partnerships are void if, when the partnership was registered, either party to the partnership was domiciled in Northern Ireland and either party was aged under 18.

### **Clause 9: Minimum age for marriage and civil partnership: consequential amendments**

This clause introduces Part 2 of the Schedule which contains minor and consequential amendments in connection with the increase in the minimum age for marriage and civil partnership.

### **Clause 10: Saving provision**

This clause makes certain savings provisions in relation to the proposed changes in the law to the minimum age for marriage and civil partnership. Subsection (1) makes it clear that any changes made by Part 2 of the Bill do not affect the validity of any marriage solemnised or any civil partnership registered before the provisions relating to the increase in the minimum age come into operation (“the relevant date”).

It is a requirement under the 2003 Order for parties to give a marriage notice in advance of a proposed marriage ceremony. Subsection (2) provides that where a marriage notice, together with relevant consents (if required), have been properly provided before the relevant date, and the marriage has not been solemnised before that date, that marriage can take place and will be valid, and the changes to the law do not apply in relation to the intended marriage.

Subsection (3) makes similar saving provision in relation to marriages that take place outside of the United Kingdom where a certificate of no legal incapacity to marry is required by another country or territory in order for the marriage to proceed.

Subsection (4) provides for saving provision in relation to a civil partnership where a civil partnership notice has been given by each party before the relevant date, the relevant consents have been produced (if required) and the civil partnership has not been registered before the relevant date. Such civil partnerships will be able to proceed, notwithstanding the change in the minimum age on the relevant date.

Subsection (5) makes it clear that the amendment made to section 217 of the Civil Partnership Act 2004 by clause 8(3) does not affect the treatment as a civil partnership of an overseas relationship that is registered under the relevant law as having been entered into before the relevant date.

#### **Clause 11: Interpretation**

This clause defines “the 2003 Order” to mean the Marriage (Northern Ireland) Order 2003 and defines “the 2004 Act” to mean the Civil Partnership Act 2004.

#### **Clause 12: Power to make consequential provision**

This clause provides the Department of Finance with power to make regulations that make provision that is of a consequential nature.

#### **Clause 13: Short title and commencement**

This clause provides for the short title of the Bill and sets out the commencement arrangements for the Bill.

#### **Schedule: Minor and Consequential amendments**

Part 1 of the Schedule contains consequential amendments relating to belief marriage. Part 2 of the Schedule contains minor and consequential amendments relating to the minimum age of marriage and civil partnership.

### **FINANCIAL EFFECTS OF THE BILL**

13. The Department does not consider that the Bill will place any financial burden on the public purse, nor the general public.

## **HUMAN RIGHTS ISSUES**

14. The Bill is compatible with the European Convention on Human Rights.

## **EQUALITY IMPACT ASSESSMENT**

15. An equality screening exercise was carried out by the Department. No adverse impacts to any of the Section 75 groups were identified. The provisions of the Bill will apply equally to everyone.

## **SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

16. The proposed Bill will not have any adverse impact on business, charities or the voluntary sector.

## **DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN**

17. No impacts identified.

## **RURAL NEEDS IMPACT ASSESSMENT**

18. No impacts identified.

## **LEGISLATIVE COMPETENCE**

19. At Introduction the Minister of Finance had made the following statement under section 9 of the Northern Ireland Act 1998:

*“In my view the Marriage and Civil Partnership Bill would be within the legislative competence of the Northern Ireland Assembly.”*

