

EXPLANATORY MEMORANDUM TO
THE MARRIAGE (SAME-SEX COUPLES) AND CIVIL PARTNERSHIP
(OPPOSITE-SEX COUPLES) (NORTHERN IRELAND) REGULATIONS 2019

2019 No. 1514

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Northern Ireland Office and the Government Equalities Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to allow same-sex couples in Northern Ireland and under Northern Ireland law to form a civil marriage and opposite-sex couples to register a civil partnership. It provides such couples with a range of associated rights and entitlements, ensuring that these relationships are recognised throughout the Northern Ireland statute book, in particular in relation to pensions and social security, but also in relation to children and families, and gender recognition. It also provides for how equivalent overseas relationships should be treated in Northern Ireland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Northern Ireland only except as follows. The following extend to the United Kingdom: Part 1 and regulations 10(3)(a), 11(3), 12 (except paragraph (1)), 14 (except paragraph (1)), 17(1) and (2)(b), 18, 41, 42(2) to (4), 43(2) to (7), 44, 46(1) and (2) and 49 to 52. The following extend to Northern Ireland, and England and Wales: regulations 10(3)(c), 26(3)(b) and (6)(b) and 46(3). Regulation 47(1) extends to England and Wales only. Regulation 47(3) extends to Scotland only. Regulation 65 extends to England and Wales, and Scotland.
- 4.2 The territorial application of this instrument is the same as the territorial extent.

5. European Convention on Human Rights

- 5.1 The Secretary of State for Northern Ireland, Julian Smith, has made the following statement regarding Human Rights:

“In my view the provisions of the Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Marriage (Same Sex Couples) Act 2013 (c.30) made it possible for same-sex couples to marry in England and Wales, and the Marriage and Civil Partnership (Scotland) Act 2014 (c.5) made similar changes for Scotland. Same-sex marriage has not been possible to date in Northern Ireland.
- 6.2 The Civil Partnership Act 2004 (c.33) (“the 2004 Act”) introduced civil partnerships for same-sex couples across the United Kingdom. The Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 (c.12) and the Civil Partnership (Opposite-Sex Couples) Regulations 2019 (S.I. 2019/1458) (“the 2019 Regulations”) extended civil partnerships to opposite-sex couples in England and Wales. The Civil Partnership (Scotland) Bill will have similar effect in Scotland. Opposite-sex civil partnerships have not been available to date in Northern Ireland.
- 6.3 The duty under section 8 of the NIEFA requiring the Secretary of State to make regulations extending marriage to same-sex couples and civil partnerships to opposite-sex couples in Northern Ireland came into force on 22 October 2019 in the absence of a restored Northern Ireland Executive by 21 October 2019.
- 6.4 Further regulations made under section 8 of the NIEFA are intended to be made in 2020. These will follow a consultation on same-sex religious marriage and the associated protections for that, and conversion entitlements from civil partnership to marriage (and vice versa). A consultation on conversion entitlements in England and Wales was conducted in 2019. Given the various potential policy options and the need to ensure that protections balance the rights of religious bodies and religious couples who are in favour of same-sex marriage or opposite-sex civil partnership with the rights of those who are not, and taking into account the particular legal and religious landscape in Northern Ireland, it was decided that a consultation on these areas is necessary. This will allow full account to be taken both of the practical and operational issues in Northern Ireland, as well as relevant rights under the European Convention on Human Rights. A staggered approach to implementation was announced in Parliament on 21 October 2019.

7. Policy background

What is being done and why?

- 7.1 This instrument applies to marriage and civil partnership policy which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998 (c.47). The UK Government remains committed to restoring devolution in Northern Ireland. Parliament determined, however, that in the absence of a restored Northern Ireland Executive, the UK Government should legislate to allow same-sex marriages and opposite-sex civil partnerships in Northern Ireland.
- 7.2 Campaigners, including human rights and equality bodies, have lobbied strongly for a number of years for the introduction of same-sex marriage in Northern Ireland. The Northern Ireland Assembly voted on five occasions on motions on the marriage of same-sex couples. The most recent occasion was in November 2015 when, for the first time, the Assembly voted by a majority of one in favour of a motion which called on

the Executive to table legislation to allow for marriage of same-sex couples. However, the motion failed because it did not achieve a cross-community majority and did not progress. Subsequent Private Members' Bills at Westminster also failed to progress.

- 7.3 When the Northern Ireland (Executive Formation etc.) Bill was being considered by Parliament in July 2019, Conor McGinn MP successfully amended the Bill at Commons Committee stage to require the UK Government to introduce regulations to extend same-sex marriage to Northern Ireland. His amendments attracted very strong support, with the new clause approved by 383 votes to 73. The new clause was further amended in the House of Lords by Lord Hayward, with government support, and extended to include opposite-sex civil partnerships in Northern Ireland.
- 7.4 This instrument gives effect to commitments made by the government during the Parliamentary passage of the NIEFA.
- 7.5 Part 2 of the instrument permits same-sex couples in Northern Ireland to marry. It does so in particular by amending the Marriage (Northern Ireland) Order 2003 (S.I. 2003/413 (N.I. 3)) and the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I. 15)), removing the legal impediments to same-sex marriage under Northern Ireland law. The effect of the Regulations is to apply the current preliminaries of civil marriage in Northern Ireland to same-sex couples. Part 2 also provides that same-sex marriages formed elsewhere in the UK or overseas can be recognised as marriages under Northern Ireland law (they are currently treated as civil partnerships). In addition, it provides for consular and armed forces marriages to be formed overseas under Northern Ireland law.
- 7.6 Part 3 extends civil partnerships to opposite-sex couples in Northern Ireland by amending the definition of civil partnership and the eligibility criteria for registering as civil partners in the 2004 Act, to remove the same-sex requirement. The effect of the Regulations is to apply the current preliminaries of civil partnership in Northern Ireland to opposite-sex couples. It also amends Part 5 of the 2004 Act so that certain opposite-sex relationships formed in other countries, which are not marriages, can be treated as civil partnerships under Northern Ireland law.
- 7.7 Part 4 amends legislation relating to children and parenthood to provide opposite-sex parents in a civil partnership with generally the same rights as opposite-sex married parents. In particular the instrument extends the provisions governing legitimacy, presumed paternity and parental status (in cases of assisted reproduction), in cases where a child's mother and father are married, to cases where a child's mother and father are in a civil partnership with one another. It also provides for opposite-sex parents in civil partnerships to have the same rights and responsibilities as opposite-sex married parents in respect of parental responsibility and registration of births.
- 7.8 Part 5 of this instrument amends the Gender Recognition Act 2004 (c.7), which enables individuals to apply for a gender recognition certificate to change their legal gender. The changes will allow applicants in marriages or civil partnerships formed in Northern Ireland to obtain a full gender recognition certificate without the need to first bring their relationship to an end, provided their spouse or civil partner consents. Until now, this was only possible where both civil partners obtained a gender recognition certificate on the same date. This brings the position in Northern Ireland in line with that in England and Wales.
- 7.9 Part 6 makes consequential changes to pensions and social security primary legislation, while Part 7 makes changes to pensions and social security secondary

legislation. Part 8 deals with changes to public sector pensions schemes in Northern Ireland. In particular the Regulations change references in pensions legislation to allow survivor benefits to be paid to a same-sex spouse or opposite-sex civil partner; and change references to “couples” in social security legislation so that they are read as including same-sex married couples and opposite-sex civil partners.

- 7.10 Parts 9 and 10 makes other changes to primary and secondary legislation respectively, to reflect that in Northern Ireland married couples may now be of the same sex and civil partners may now be of the opposite sex.
- 7.11 Part 11 contains transitional provision in relation to opposite-sex overseas relationships that will be treated as civil partnerships under Northern Ireland law as a result of this instrument. This provision reflects similar measures in Schedule 2 to the 2019 Regulations for England and Wales.
- 7.12 In accordance with the amendments made by these Regulations, marriages of same-sex couples can initially only be solemnised by a person appointed under article 31 of the Marriage (Northern Ireland) Order 2003 i.e. as a civil marriage. Same-sex religious marriage is not provided for under this first set of Regulations as it is intended to be the subject of a consultation and further legislation, as outlined above. In recognition of the fact that not everyone supports the introduction of same-sex marriage or opposite-sex civil partnerships, this instrument provides certain protections. In particular, new exceptions (see regulations 133 and 163) ensure that it is not unlawful discrimination for religious bodies to provide blessings (ceremonies or events to mark a marriage or civil partnership) only to same-sex, or opposite-sex, couples. In addition, regulation 142 amends the Public Order (Northern Ireland) Order 1987 (S.I. 1987/463 (N.I. 7) to make clear that it is not a criminal offence simply to criticise same-sex marriage.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 There is no consolidation done by this instrument.

10. Consultation outcome

- 10.1 The drafting of this instrument has been informed by engagement with the Northern Ireland Civil Service, including the General Register Office for Northern Ireland (GRONI). It draws heavily on the equivalent legislative provisions in England and Wales and Scotland, which were informed by formal consultation exercises.
- 10.2 The Secretary of State for Northern Ireland announced in the House of Commons on 21 October 2019 that the government would be consulting on two issues in relation to the exercise of the NIEFA power under section 8 in Northern Ireland: the introduction of same-sex religious marriage and the necessary protections for those religious bodies and individuals that do not wish to solemnise same-sex marriage; and what conversion entitlements should be available to couples in Northern Ireland.
- 10.3 We intend to publish this consultation in January 2020 with further regulations to follow later in 2020.

11. Guidance

- 11.1 The government will update the guidance on marriage and civil partnerships on the *nidirect* website around the time of implementation. GRONI will also issue guidance on these changes to local registration services.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 The main impact on the public sector will be changes to GRONI's operating systems.
- 12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses (in terms of regulatory burdens).

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the Northern Ireland Office and the Government Equalities Office will keep it under review, while monitoring the uptake of same-sex marriages and opposite-sex civil partnerships in Northern Ireland.
- 14.2 A statutory review clause is not included in this instrument as the Secretary of State does not consider it appropriate, since there is not expected to be a significant annualised net impact on business (greater than +/-£5 million net annualised).

15. Contact

- 15.1 Alexis Petrou at the Northern Ireland Office Telephone: 0207 210 0817 or email: alexis.petrou@nio.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Bilal Zahid, Deputy Director for same-sex marriage/opposite-sex civil partnerships delivery, at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Julian Smith at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.