

**EXPLANATORY MEMORANDUM TO**  
**THE MARRIAGE AND CIVIL PARTNERSHIP (NORTHERN IRELAND)**  
**REGULATIONS 2020**

**2020 No. 742**

**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 to form a religious marriage in Northern Ireland and overseas in accordance with arrangements for armed forces marriages under Northern Ireland law. It also provides protections for those religious bodies and individual officiants who do not wish to perform same-sex religious marriages, or to provide ceremonies or events to mark the solemnisation of same-sex marriages or the formation of civil partnerships.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 Regulations 14(2) and (3), 15 and 16 of this instrument correct errors in the Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), identified by the JCSI in paragraphs 13.3, 13.9 and 13.10 of its Third Report of Session 2019-21.

*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: Regulations 3(2) and (4), 10(2)(a) and (b)(ii) and 13(2) extend also 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 Minister of State for Northern Ireland, Robin Walker MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Marriage and Civil Partnership (Northern Ireland) Regulations 2020 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.
- 6.2 The Civil Partnership Act 2004 (c.33) 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) extended civil partnerships to opposite-sex couples in England and Wales. The Civil Partnership (Scotland) Bill will have similar effect in Scotland.
- 6.3 Section 8 of the Northern Ireland (Executive Formation etc) Act 2019 (c.22) (“NIEFA”) imposed a duty on the Secretary of State to make regulations to enable same-sex marriage and opposite-sex civil partnerships in Northern Ireland by 13 January 2020. That duty came into force on 22 October 2019 in the absence of a restored Northern Ireland Executive by 21 October 2019. The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514) (“the 2019 Regulations”), which came into force on 13 January 2020, allowed 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.
- 6.4 The UK Government committed to introducing further regulations under NIEFA enabling same-sex religious marriage later in 2020, following a consultation exercise. This staggered approach to implementation was announced to Parliament on 21 October 2019.

## 7. Policy background

### *What is being done and why?*

- 7.1 The instrument applies to marriage policy which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998 (c.47). While the Northern Ireland Executive and Assembly were restored in January 2020, the UK government has committed to delivering two remaining policy obligations under section 8 NIEFA: same-sex religious marriage and conversion rights.
- 7.2 The UK government’s approach to implementing same-sex marriage in Northern Ireland was set out by the then Secretary of State for Northern Ireland, Julian Smith MP, in a statement to Parliament on 21 October 2019 in which he said:  
“On same-sex marriage and opposite-sex civil partnerships, regulations are to be made no later than 13 January 2020. There are two key areas on which we will consult: how to allow for religious same-sex marriage ceremonies; and the issue of conversion from civil partnership to marriage and vice versa. So that we can tailor the regulations appropriately, there will be a short consultation on these two issues before we introduce religious same-sex marriage in Northern Ireland. This will not detract from the regulations by 13 January 2020, providing for civil same-sex marriages and opposite-sex civil partnerships.<sup>1</sup>”

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<sup>1</sup> <https://hansard.parliament.uk/Commons/2019-10-21/debates/6BBF6C7A-CA81-4E86-9711-AC031A056424/NorthernIrelandRestoringDevolution?highlight=same%20sex%20marriage#contribution-EFABDEB9-93CD-4C76-A058-7D7CEDDE0F4E>

- 7.3 The *Same-sex religious marriage in Northern Ireland*<sup>2</sup> consultation was published on 20 January 2020 (shortly after restoration of the devolved institutions in Northern Ireland) and closed on 23 February. It sought views on the UK government’s proposals for implementing same-sex religious marriage and religious protections in Northern Ireland.
- 7.4 This instrument gives effect to the policy proposals set out in the consultation.
- 7.5 Part 2 of the instrument permits same-sex couples in Northern Ireland to have a religious marriage. It does so by amending the Marriage (Northern Ireland) Order 2003 (S.I. 2003/413 (N.I. 3)) (“the Marriage Order”) and the Overseas Marriage (Armed Forces) Order 2014 (S.I. 2014/1108), removing the legal impediments to same-sex religious marriage under Northern Ireland law.
- 7.6 Part 2 also introduces new requirements for the appointment of religious officiants to solemnise same-sex marriages in Northern Ireland. Such officiants may not be registered under Article 11 of the Marriage Order, or temporarily authorised under Article 14, unless the Registrar General has received consent in writing from the ‘governing authority’ of the religious body of which they are a member. Similar consent requirements applicable to armed forces religious marriages overseas are extended to the law of Northern Ireland.
- 7.7 The governing authorities for certain larger religious bodies in Northern Ireland are specified in regulation 4 (inserting new article 9A into the Marriage Order). Where no governing authority is specified for a religious body, the governing authority is defined as “the person recognised by members of the body as competent for the purpose of giving consent, in respect of members of the body, for the purposes of Articles 10 (applications for registration of officiants) and 14 (temporary authorisation to solemnise religious marriages)”.
- 7.8 Part 3 of the instrument amends the Marriage Order to provide protections for religious bodies and persons acting on behalf of, or under the auspices of such bodies, against being compelled to undertake various actions in connection with the solemnisation of same-sex marriages. This is broadly similar to the existing protection put in place in England and Wales in 2014.
- 7.9 In response to a point raised during the consultation, the protections now extend to the use of premises such as church halls and other buildings owned by (or on behalf of) a religious body, except where the premises are used solely or mainly for commercial purposes.
- 7.10 Part 3 also amends Part 4 of the Civil Partnership Act 2004 (civil partnership: Northern Ireland) to provide similar protections for religious bodies and persons acting on behalf of, or under the auspices of such bodies, against being compelled to undertake various actions in connection with ceremonies or events to mark the formation of a civil partnership. These protections apply in relation to civil partnerships generally, civil partnerships between parties of the same sex or civil partnerships between people of the opposite sex. This provision is broadly similar to provision applicable to civil partnerships in England and Wales, except that in Northern Ireland (unlike in England and Wales) it is not possible to register a civil partnership on religious premises.

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<sup>2</sup> <https://www.gov.uk/government/consultations/a-consultation-on-same-sex-religious-marriage-and-conversion-entitlements-in-northern-ireland>

- 7.11 Part 3 also extends existing non-compulsion protection in the Marriage (Same Sex Couples) Act 2013 relating to same-sex armed forces marriages overseas to the law of Northern Ireland.
- 7.12 Part 4 amends other legislation. It amends an existing exception in regulation 16 of the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (S.R. (N.I.) 2006/439), which already permits non-commercial organisations relating to religion or belief, and ministers, to act in ways that might otherwise amount to unlawful sexual orientation discrimination, where necessary to comply with the doctrine of the organisation or so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion’s followers. This exception was amended by the 2019 Regulations so that restrictions on sexual orientation grounds could additionally be imposed in connection with a ceremony or event to mark the solemnisation of a marriage or formation of a civil partnership (such as blessings). The exception is further amended by this instrument so that restrictions may also be imposed without unlawful sexual orientation discrimination in connection with the solemnisation of a marriage.
- 7.13 Part 4 also revokes amendments made by the 2019 Regulations to the Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15)) (“the Sex Discrimination Order”). These amendments included a new exception so that a religious organisation (or a person acting on behalf of, or under the auspices of, such an organisation), who refused to conduct a ceremony or event to mark the solemnisation of a marriage or the formation of a civil partnership, did not unlawfully discriminate on grounds of sex. The consultation sought views on whether similar sex discrimination exceptions should apply to the solemnisation of same-sex religious marriages. On reflection, this could have had the unwanted consequence of allowing religious bodies to treat male same-sex couples differently to female same-sex couples, which is not the policy intention. It could also (wrongly) suggest that refusing to marry same-sex couples is to be treated as sex discrimination when it should be treated as discrimination on grounds of sexual orientation. We have therefore decided not to pursue this policy in this instrument and to revoke the changes we had made to the Sex Discrimination Order.

## **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 the consultation published on 20 January 2020. The consultation was aimed in particular at:
- Same-sex couples who wish to have a religious marriage;
  - Religious organisations that wish to solemnise same-sex marriages in Northern Ireland;
  - Religious organisations that do not wish to solemnise same-sex marriages in

Northern Ireland; and

- LGBT organisations who may have had views on the proposals for enabling same-sex religious marriage in Northern Ireland.

10.2 The consultation, which closed on 23 February, received 4,322 responses: 4,159 from individuals and 163 from those identifying as organisations. Respondents, both organisations and individuals, strongly supported all of the proposals. The government has made two changes to the proposals to address points emerging from the consultation. The first is the new protection in relation to premises owned by a religious body. The second is the removal of the reference to sex discrimination. The government response to the consultation has been published to coincide with the laying of this instrument.

## **11. Guidance**

11.1 The General Register Office Northern Ireland (GRONI) will issue guidance on any changes regarding marriage and civil partnerships to the local registration services and advise the NIDirect website Editorial team ahead of implementation.

## **12. Impact**

12.1 A full impact assessment has not been produced for this instrument as no, or no significant, impact on business, charities or voluntary bodies is foreseen.

12.2 A full impact assessment has not been produced for this instrument as no, or no significant, impact on the public sector is foreseen.

12.3 A full Impact Assessment for the 2019 Regulations was published alongside the Explanatory Memorandum for that instrument on the [legislation.gov.uk](http://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 religious marriages 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 Raphaela Thynne at the Northern Ireland Office email: [raphaela.thynne@nio.gov.uk](mailto:raphaela.thynne@nio.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Holly Clark, Deputy Director for Constitutional Policy and Rights Group at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robin Walker MP, Minister of State at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.