



BRIEFING PAPER

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Humanist marriage ceremonies

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Summary

Sections 1 to 5 of this briefing paper deal with the law in England and Wales. Section 6 sets out a brief summary of the position in Scotland and in Northern Ireland, where it is possible to have a legally recognised humanist marriage ceremony.

Current position in England and Wales

The regulation of marriage is based largely on the building in which the relevant marriage takes place. The Marriage Act 1949 (as amended) provides for civil marriage; marriage according to the rites and ceremonies of the Church of England and the Church in Wales; Jewish and Quaker marriage; and marriage according to the rites of a recognised religion in a building that has been registered for the purpose. However, there is no specific provision for marriages to be conducted according to any non-religious system of belief, such as humanism.

At present, therefore, humanist marriage ceremonies do not have legal force and the parties must have an additional ceremony (for example, at a register office) for the marriage to be legally valid. Humanists UK has campaigned for the law to be changed to allow humanist celebrants to conduct legal marriages.

Coalition Government consultation

Following calls for legislation to facilitate humanist marriage, the Coalition Government agreed to carry out a review of whether the law should be changed to permit marriage according to the usages of non-religious belief organisations. In accordance with a provision in the Marriage (Same Sex Couples) Act 2013, the Ministry of Justice conducted a public consultation on the issue. The consultation ran from 26 June 2014 to 18 September 2014.

The majority of respondents to the consultation were in favour of changing the law to allow legally valid non-religious belief marriage ceremonies to take place in unrestricted locations, including outdoors. However, the Coalition Government decided that the legal and technical requirements of marriage ceremonies and registration in England and Wales should be considered more generally before, or at the same time as, making a decision on the issue of permitting legally valid non-religious belief marriage ceremonies.

Law Commission project

At the Coalition Government's request, the Law Commission conducted an initial scoping review of marriage law. It found that the law was badly in need of general reform and that it would not be appropriate to legislate solely for non-religious belief organisations, as this would create further anomalies.

In the October 2018 Budget, the Government announced that, in connection with promoting greater choice of wedding venues, it had asked the Law Commission to propose options for "a simpler and fairer system to give modern couples meaningful choice".

On 28 June 2019, the Government announced the launch of a Law Commission review of the law governing how and where marriages can take place in England and Wales.

The Law Commission's terms of reference provide that they will not make recommendations as to whether the groups who can solemnize marriages should be expanded. However, the terms of reference do require the Law Commission to consider how the law could be reformed to enable a wider range of persons to solemnize a

marriage, and how marriage by humanist and other non-religious belief organisations could be incorporated into a revised or new scheme, if the Government decides that the law should allow these groups to conduct legally binding weddings.

Law Commission consultation

On 3 September 2020, the Law Commission published *Getting Married: A Consultation Paper on Weddings Law*, which provisionally proposes a new scheme intended, among other things, to:

- allow weddings to take place anywhere, including outdoors;
- offer couples greater flexibility over the form their wedding ceremonies will take, enabling them, if they desire, to use a variety of ceremonies (religious and non-religious) to mark their weddings;
- simplify the process and remove unnecessary red tape;
- provide a framework that could allow non-religious belief organisations (such as humanists) and/or independent celebrants to conduct legally binding weddings.

One of the features of the new scheme is that regulation would be based on the officiant rather than on the building in which the wedding takes place. If the Government determines that non-religious belief organisations should be able to solemnize weddings, these organisations would be able to nominate officiants.

What will happen next?

After analysing the responses, the Commission intends to publish its final report, with recommendations for reform to Government, in the second half of 2021.

Legal challenge

In July 2020, the High Court dismissed a judicial review claim, brought by six couples identifying as humanists, in respect of the Secretary of State for Justice's failure to extend legal recognition to humanist marriages. They contended that the legislation providing for the legal recognition of marriage in England gives rise to an unjustified discrimination in the exercise of their rights under the European Convention on Human Rights ("ECHR") and therefore breaches the Human Rights Act 1998 ("the HRA").

Mrs Justice Eady found that, although the law relating to weddings treats humanists differently from those with religious beliefs, addressing the differences in treatment would not be straightforward, and this justified the Secretary of State's aim of considering the appropriate remedy as part of a more wholesale reform. Taking into account the on-going review of the law of marriage, Mrs Justice Eady held that, at this time, the Secretary of State had demonstrated that a fair balance has been struck between the individual rights of the couples and those of the broader community.

1. Where may a marriage ceremony take place?

The Marriage Act 1949 (as amended) sets out the premises where a marriage ceremony may take place in England and Wales. It provides for:

- civil marriage;
- marriage according to the rites and ceremonies of the Church of England and the Church in Wales;
- marriage according to Jewish and Quaker (the Society of Friends) customs;
- marriage according to all other religious rites (eg Catholic, Methodist, Muslim), in a place of worship that has been registered for the purpose.

The legislation provides for civil marriage and for religious marriage but not specifically for marriage in accordance with a non-religious system of belief, such as humanism

The regulation of marriage is based largely on the building in which the relevant marriage takes place. Marriages must normally take place at the following venues:

- register office;
- approved premises, such as an hotel;
- a building of the Church of England or the Church in Wales;
- a registered building (that is, a building that has been certified as a place of worship and also registered for the purpose of religious marriage);
- naval, military and air force chapels;
- in certain circumstances, marriages can also take place at the residence of someone who is housebound or detained, or of someone who is terminally ill.

For mainly historical reasons, those marrying according to Jewish and Quaker customs are exempt from some of the conditions imposed on those marrying according to all other rites, and can marry in any place, including outdoors.

The Marriage (Same Sex Couples) Act 2013 enables same sex couples to be married in either a civil ceremony, or a religious ceremony (other than in accordance with the rites and ceremonies of the Church of England or Church in Wales), where the religious organisation has opted in to conduct marriages of same sex couples.

The Law Commission's 2020 consultation paper, [Getting Married: A Consultation Paper on Weddings Law](#), provides detailed information about the current law relating to weddings.¹

¹ [Law Commission Consultation Paper No 247, Getting Married: A Consultation Paper on Weddings Law](#), 3 September 2020

2. Humanist marriage ceremonies: what is the issue?

2.1 Current position

The law permits both civil marriage and religious marriage. However, there is no specific provision for marriages to be conducted according to any non-religious system of belief, such as humanism.

At present, therefore, humanist marriage ceremonies do not have legal force and the parties must have an additional ceremony (for example, at a register office) for the marriage to be legally valid.

The charity, [Humanists UK](#)² provides non-legally binding humanist marriage ceremonies in England and Wales. In its 2020 consultation paper on weddings law, the Law Commission stated that Humanists UK had told them that “it has 257 celebrants performing wedding ceremonies in England and Wales, who have performed over 1,000 such ceremonies in each of the past four years”.³

At present humanist marriage ceremonies in England and Wales are not legally valid

2.2 Humanists UK’s campaign for change

Like anyone else who does not wish to have a religious marriage, humanists are able to have a civil marriage either in a register office or at approved premises.

However, [Humanists UK](#) believes that humanists should have the option to be married by someone who shares their values and beliefs, as they can in other countries. The organisation has campaigned for the law to allow humanist celebrants to conduct legal marriages. It has called for equal treatment for humanists and religious people, pointing out that this is already the position in Scotland, Northern Ireland and Jersey (among other places):

Weddings conducted by a humanist celebrant can be performed in any part of the UK or crown dependencies, but they don’t come with legal recognition in England, Wales, Guernsey,^[4] or the Isle of Man. This is discriminatory, because religious people have a choice between being married by a civil registrar or being married by a representative of their religion who shares their approach to life, but those wanting a humanist wedding also have to have a separate civil marriage in order to be legally married. This causes additional expense and an administrative burden that religious couples don’t have to face, but more than that, couples often complain that the wedding ceremony they see as their ‘real’ marriage ceremony is not the one recognised in law as when they become legally married.

² The operating name of the British Humanist Association (BHA)

³ [Law Commission Consultation Paper No 247, Getting Married: A Consultation Paper on Weddings Law](#), 3 September 2020, paragraph 5.7

⁴ Humanists UK, [Legal recognition of humanist marriages](#) states: “In 2020 the Guernsey States Assembly voted in favour of bringing about legal recognition of humanist marriages after a consultation showed 94% in favour. The legislation is expected to get royal assent and come into force over the next year” [accessed 25 September 2020]

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(...)

We want the law throughout the UK and crown dependencies to allow humanist celebrants to conduct legally recognised marriages, as it does in Scotland, Northern Ireland, and Jersey. This would give non-religious people the same choice that religious people have of a meaningful ceremony conducted by a person who shares their values and approach to life. Non-religious people in many other countries, from the Republic of Ireland to Australia to New Zealand to the USA already enjoy this choice.⁵

In 2019, Humanists UK published a poll showing “there is strong public support for legal recognition in England and Wales, with 69% in favour and just 12% opposed”.⁶

In 2014, the Coalition Government stated that, “whilst the BHA^[7] has been the most active in campaigning for a change in the law, there may be other non-religious belief organisations who would wish to conduct marriage ceremonies”.⁸

⁵ Humanists UK, [Legal recognition of humanist marriages](#) [accessed 16 September 2020]

⁶ Ibid

⁷ British Humanist Association, now operating under the name Humanists UK

⁸ Ministry of Justice, [Marriages by Non-Religious Belief Organisations](#), 26 June 2014, p17

3. Marriage (Same Sex Couples) Act 2013

The issue of whether the [Marriage \(Same Sex Couples\) Act 2013](#) should permit marriage according to the usages of non-religious belief organisations, and specifically whether it should facilitate humanist marriage, in addition to civil marriage and religious marriage, was debated in both Houses when the preceding Bill was being considered.⁹

Although the Coalition Government resisted earlier proposed amendments, at Report stage in the House of Lords, the Government's own amendments were agreed without a vote.¹⁰ Baroness Stowell of Beeston, who was then Lords Spokesperson for Women and Equalities, said that she had recognised the strength of feeling on the issue.¹¹

Accordingly, the [Marriage \(Same Sex Couples\) Act 2013](#) provided for a review of whether the law should be changed to permit marriage according to the usages of non-religious belief organisations, to include a full public consultation, with a report of the outcome to be published by the end of 2014.¹²

The Act gives the Secretary of State power to make provision, by order, permitting marriages according to the usages of belief organisations. Any such order may amend any England and Wales legislation, both primary and secondary.

3.1 Coalition Government consultation

On 26 June 2014, the Ministry of Justice launched a consultation, [Marriages by Non-Religious Belief Organisations](#). The consultation closed on 18 September 2014.

The consultation asked for views on a number of issues, including:

- whether there was a substantial case for changing the law to establish non-religious belief ceremonies which would allow a third type of legal ceremony, alongside religious and civil ceremonies, for getting married in England and Wales;
- which organisations, other than humanists, should be capable of meeting the definition of a belief organisation, set out in section 14, as “an organisation whose principal or sole purpose is the advancement of a system of non-religious beliefs which relate to morality or ethics”, and whether the definition was appropriate;
- where, if allowed, such marriages would take place;
- if the law was changed, which safeguards would be needed to deal with any resulting risks and to protect the status and dignity of marriage;

⁹ See, for example, Library Briefing Paper RP 13/22, [Marriage \(Same Sex Couples \) Bill Committee Stage Report](#), 14 March 2013, pp14-15.

¹⁰ [HL Deb 10 July 2013 c302](#) (amendment 90)

¹¹ [HL Deb 8 July 2013 c92](#)

¹² [Section 14](#)

- whether tests should be introduced that a belief organisation would have to meet before its celebrants could be authorised to solemnise marriage, and if so, what those tests might be; and
- the equality impacts of the proposed options on marrying couples with protected characteristics.

The consultation paper also outlined what a legally valid belief marriage ceremony might have to include and considered who should be able to marry in such a ceremony.

3.2 Coalition Government response to consultation

On 18 December 2014, the Coalition Government published its [response](#) to the consultation paper.¹³

This stated that there had been 1,901 responses to the consultation, the majority of which appeared to be from humanists or supporters of the BHA,¹⁴ with many individual respondents appearing to have used a BHA guide to answering the consultation questions. The majority of those responding supported a change in the law to allow legally valid non-religious belief marriage ceremonies, in unrestricted locations, alongside religious and civil marriage ceremonies in England and Wales.¹⁵

However, the Coalition Government considered that a number of complex issues had been raised which had implications for marriage solemnization more broadly. For example, outdoor marriage had emerged as a strong theme from the consultation. The Government was aware that allowing only non-religious belief marriages to take place in unrestricted locations might be seen as unfair:

The BHA and the majority of those supporting humanist marriages are of the firm view that only ceremonies in unrestricted locations will provide equality for and meet the needs of humanist couples. However, allowing belief marriages to take place at unrestricted locations would create a further difference in treatment in our marriage law and is opposed by the Church of England (CoE) and Church in Wales on the basis that it would create an inequality for the majority of religious groups and couples who are restricted to their registered place of worship. Registration services report a growing demand for outdoor marriages, and the Government is aware that allowing belief marriages in unrestricted locations may also be seen as unfair by couples who are neither religious nor humanist but who also may want a greater choice of marriage venues. Any broader changes concerning the places where marriages ceremonies may be conducted could not be achieved through the order-making power in section 14 of the 2013 Act,

¹³ Ministry of Justice, [Marriages by Non-Religious Belief Organisations: Summary of Written Responses to the Consultation and Government Response](#), 18 December 2014.

¹⁴ British Humanist Association, now operating under the name, Humanists UK

¹⁵ Ministry of Justice, [Marriages by Non-Religious Belief Organisations: Summary of Written Responses to the Consultation and Government Response](#) pp3-4

which is limited to making provision for marriages by people in non-religious belief organisations.¹⁶

The Coalition Government did not consider that there was any option which could be implemented immediately that would provide for complete equality of treatment between those with religious beliefs, those with humanist or other non-religious beliefs, and couples more generally.¹⁷

The Government also wanted there to be further consideration of managing risk through the use of qualifying criteria, particularly in relation to preventing sham and forced marriages, inappropriate ceremonies, and the commercialisation of marriage solemnization.¹⁸

The response stated that the legal and technical requirements of marriage ceremonies and registration in England and Wales should be considered before, or at the same time as, making a decision on the issue of non-religious belief ceremonies:

We think it is important that we take the opportunity to consider all these issues together. We wish to avoid any negative consequences that may result from undertaking further piecemeal legislation. Therefore, having carefully considered the full range of responses and the complex issues associated with any option for change (which have implications for marriage solemnization more broadly) the Government's view is that it is now necessary to consider carefully the legal and technical requirements of marriage ceremonies and registration before or at the same time as making a decision on whether to take forward the specific proposal to permit legally valid marriage ceremonies for those with non-religious beliefs.¹⁹

The Coalition Government said that it would ask the Law Commission to conduct a broader review of the law concerning marriage ceremonies, to begin as soon as possible.

3.3 All-Party Parliamentary Group report

On 24 May 2018, the All-Party Parliamentary Group on Humanism published a report, [Any lawful impediment?](#) Among other things, this called on the Government to lay an Order under Section 14 of the Marriage (Same Sex Couples) Act 2013, which would provide for the legal recognition of marriages conducted by Humanists UK.

¹⁶ Ministry of Justice, [Marriages by Non-Religious Belief Organisations: Summary of Written Responses to the Consultation and Government Response](#), 18 December 2014, p5.

¹⁷ Ibid p4.

¹⁸ Ibid p5

¹⁹ Ibid

4. Legal challenge

Summary

In July 2020, the High Court dismissed a judicial review claim, brought by six couples identifying as humanists, in respect of the Secretary of State for Justice's failure to extend legal recognition to humanist marriages.²⁰ They contended that the legislation providing for the legal recognition of marriage in England gives rise to an unjustified discrimination in the exercise of their rights under the European Convention on Human Rights ("ECHR") and therefore breaches the Human Rights Act 1998 ("the HRA").

Mrs Justice Eady found that, although the law relating to weddings treats humanists differently from those with religious beliefs, addressing the differences in treatment would not be straightforward, and this justified the Secretary of State's aim of considering the appropriate remedy as part of a more wholesale reform. Taking into account the on-going review of the law of marriage,²¹ Mrs Justice Eady held that, at this time, the Secretary of State had demonstrated that a fair balance has been struck between the individual rights of the couples and those of the broader community.

4.1 The arguments

Six couples (Claimants) complained that the law recognises different forms of religious wedding ceremony but not weddings carried out in accordance with their humanist beliefs. They contended that this gives rise to an unjustified discrimination in the exercise of their rights under the European Convention on Human Rights ("ECHR") and so breaches the Human Rights Act 1998 ("the HRA"). They sought a declaration that the legislation providing for the legal recognition of marriage in England violates their rights under the HRA, and a declaration of incompatibility pursuant to section 4 of the HRA.

The Secretary of State for Justice (Defendant) resisted the claim, contending that the system of marriage permitted under English law provides the couples with a legally recognised, non-religious ceremony that is sufficiently capable of accommodating their wishes and beliefs. The Secretary of State said that any difference between what is permitted, and the recognition of humanist marriage sought by the couples, does not satisfy the requirements for a claim of discrimination contrary to Article 14 ECHR.

The Secretary of State disputed the claim of a violation of the Claimants' rights, arguing that, even if there is any difference in treatment between the Claimants and their religious comparators, the measures under challenge are objectively and reasonably justified, not least given the ongoing consideration of reform in this area of social policy.²²

²⁰ [Harrison and Ors, R \(On the Application Of\) v Secretary of State for Justice \[2020\] EWHC 2096 \(Admin\)](#)

²¹ The Law Commission's review of weddings law is dealt with in section 5 of this briefing paper

²² [Harrison and Ors, R \(On the Application Of\) v Secretary of State for Justice \[2020\] EWHC 2096 \(Admin\)](#) paragraphs 1-4

4.2 The decision

Mrs Justice Eady stated that the right in issue was that guaranteed by article 9 ECHR - to manifest religion or belief,²³ and found that the law treats humanists differently from those with religious beliefs:

While couples who hold humanist beliefs may be able to manifest those beliefs through a ceremony conducted by a humanist celebrant and according to the usages of Humanists UK (...), that celebrant - who will, consistent with the emphasis humanism places on the individual person, have got to know the couple and devised a ceremony that is individual to them (...) - will not be an authorised person for the purposes of the solemnization of the marriage, or able to register the marriage, and that ceremony will not, of itself, be given legal recognition absent the presence of officials who need have no connection with humanism.

Comparing like with like, the humanist couple who wish to have a marriage ceremony that manifests their belief, in the same way as a religious couple might do, are thus treated differently: unlike their religious comparators, the conduct of their marriage ceremony, according to their humanist beliefs will not be legally recognised absent the supervisory presence of state officials.

That is the difference of treatment at the heart of this claim, and I am satisfied that it is a difference of substance, not merely one of form. Although many of the consequences of that difference - such as the additional costs involved - do not give rise to such a fundamental point of principle, they also represent differences of treatment between the Claimants and their comparators that are more than de minimis.²⁴

In seeking to demonstrate that the difference in treatment is justified, the Secretary of State put forward various matters as constituting legitimate aims.

One of these aims was avoiding the introduction of further complexity and new forms of discrimination into English law relating to marriage.

Mrs Justice Eady addressed this point:

Acknowledging that the removal of discrimination may be complex cannot, of itself, make a failure to address that discrimination a legitimate aim; it cannot be open to the Defendant to simply sit on his hands because taking steps to address a discriminatory difference in treatment impacting upon one group may give rise to issues relating to others.²⁵

The Secretary of State also argued that it was a legitimate aim to wish to reform the law on a wholesale, rather than a piecemeal, basis when there were further issues arising in this area of social policy, which were being considered by the Law Commission.²⁶

Mrs Justice Eady said that there was evidence to support this argument, noting the Law Commission's agreement with it:

If legal recognition is to be afforded to marriages conducted according to the Usages for humanist marriages, that may well give rise to questions as to whether wider reforms are necessary

²³ Ibid, paragraph 89

²⁴ Ibid, paragraphs 92 to 94

²⁵ Ibid, paragraph 111

²⁶ Ibid, paragraph 107

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(most obviously in relation to current requirements as to the place where a wedding may be solemnized). In this regard, I am bound to note that the Law Commission concurred with the Government's view, that reform was needed on a wholesale, rather than piecemeal, basis, concluding (see paragraph 1.50 of the Law Commission's Scoping Paper):

... the answer cannot be simply to exercise the order-making power contained in section 14(4) of the Marriage (Same Sex Couples) Act 2013 to enable non-religious belief organisations to solemnize marriages. That is not to say that the law should not be reformed to accommodate marriages by non-religious belief organisations; but any steps to do that need to take place alongside a broader updating of the law of marriage that seeks to address a number of long-standing problems."²⁷

Mrs Justice Eady found that the Secretary of State had demonstrated a legitimate aim in seeking to address the issue as part of wider reform:

I remind myself that the Claimants' challenge is to the Defendant's continuing failure to provide for state recognition of humanist marriages, notwithstanding the power afforded to him under section 14(4) of the 2013 Act. Any omission on the Defendant's part has, however, to be seen both in the light of the Government's considered response to the Marriages by Non-Religious Belief Organisations consultation in 2014 (...) and the conclusions reached by the Law Commission. Given, in particular, the recommendations made in the Law Commission's Scoping Paper, I am prepared to accept that the Defendant has demonstrated a legitimate aim in seeking to address this issue as part of a wider reform. Moreover, the measure adopted - essentially to maintain the existing differences in treatment arising from the 1949 Act until that reform takes place - is rationally connected to that aim.²⁸

The Judge said, "On a claim pursuant to article 14 ECHR, it is for the court to determine whether the difference in treatment is justified" adding:

That said, where - as here - the decision under challenge clearly relates to a matter of social policy, the court must afford a measure of latitude to the democratically elected, and duly accountable, primary decision maker.

In this case, Mrs Justice Eady said that her finding of "a continuing discriminatory impact upon those who seek to manifest their humanist beliefs through marriage" would reduce the degree of deference to be allowed".²⁹

She stated that, "subject *only* to the question of justification - the present law gives rise to article 14 discrimination in the Claimants' enjoyment of their article 9 rights".³⁰

The Judge noted the concerns identified by the Government:

In the present case, the Government has identified concerns as to the potential consequences of addressing one area of unequal

²⁷ Ibid, paragraph 116

²⁸ Ibid, paragraph 117

²⁹ Ibid, paragraph 121

³⁰ Ibid, paragraph 124

treatment without doing so as part of a more general reform. Specifically, in relation to the treatment of humanist and other non-religious belief marriages, particular issues were identified relating to the location where the ceremony might take place and/or as to the potential registration of celebrants; these were matters seen to potentially give rise to new species of discrimination if reform was only undertaken on a piecemeal basis. The legitimacy of those concerns was acknowledged by the Law Commission's Scoping Paper, which also recommended that any reform be undertaken on a wholesale basis. While such concerns could not justify the taking of no action - the deference due to the Defendant cannot simply trump the discrimination identified in this case - they do demonstrate why this is a more nuanced area of social policy and one that engages a wider range of community interests than just those identified in these proceedings.³¹

Taking into account the on-going review of the law of marriage, Mrs Justice Eady dismissed the claim:

The Claimants' challenge is to the Defendant's failure to extend legal recognition to humanist marriages. That failure has, however, to be seen in context. This is an area of social policy where a margin of judgment is properly to be allowed. Although that does not mean that taking no action would be justified, or that the balance might not shift over time, addressing the differences in treatment identified by the Claimants would not be straightforward and this justifies the aim of considering the appropriate remedy as part of a more wholesale reform. Although I may deprecate the delay that has occurred since 2015, I cannot ignore the fact that there is currently an on-going review of the law of marriage in this country that will necessarily engage with the wider concerns that have been raised. Given these circumstances, at this time, the Defendant has demonstrated that a fair balance has been struck between the individual rights of the Claimants and those of the broader community.³²

³¹ Ibid, paragraph 125

³² Ibid, paragraph 128

5. Law Commission project

5.1 Law Commission scoping paper

In December 2014, the Coalition Government asked the Law Commission to conduct a review of the law governing how and where people can marry in England and Wales.

The Law Commission conducted a preliminary study involving research of domestic and comparative law, and engagement with key stakeholders. In December 2015, the Commission published [Getting Married A Scoping Paper](#),³³ together with an [Executive Summary](#).³⁴

The Scoping Paper concluded that there was a need for a wholesale review of the law relating to how and where people get married.

The Law Commission found that there are many people whose needs and wishes are not met by the current law, and that society's interest in regulating how marriages are solemnised could be better protected. The Commission also concluded that the current law does not provide a coherent framework for enabling people to marry. They found that many groups and individuals felt that the law was unfair and overly-restrictive.³⁵

The Law Commission acknowledged that the prompt for their involvement had been the consultation on whether humanists and other non-religious belief organisations should be able to solemnize marriages. However, it said, while this was important, this was only one of many issues which should be considered.

The Law Commission considered different models for reform and said that its preferred option was for "a new system that provides for greater choice within a simpler legal structure".³⁶ The Commission concluded that it would not be appropriate to legislate solely for non-religious belief organisations, as this would create further anomalies:

Non-religious belief organisations tend not to have buildings that could be registered for the solemnization of marriages. This means they could not fit easily into the current buildings-based system. They are not analogous to Jews and Quakers, whose current position in marriage law arose from their historically distinctive practices, tight self-regulation and small numbers. Non-religious belief organisations would have to be treated as a new exception, which would create further anomalies and potentially an increased perception of unfairness depending on how they were regulated. What is needed is a new system that seeks to minimise, rather than multiply, differences in the legal treatment of those authorised to conduct weddings.³⁷

³³ [Law Commission, Getting Married A Scoping Paper, 17 December 2015](#)

³⁴ [Law Commission, Getting Married A Scoping Paper Executive Summary, 17 December 2015](#)

³⁵ [Law Commission, Getting Married A Scoping Paper Executive Summary, 17 December 2015](#), paragraph 1.3.

³⁶ *Ibid* paragraph 1.44

³⁷ *Ibid* paragraph 1.46

The Law Commission said that it would be unfair to privilege non-religious belief organisations over religious groups which are subject to greater legal regulation:

In particular, it would be very difficult to justify why the fewest restrictions should be applied to the newest category... Many other religious groups would welcome the relative lack of legal regulation currently enjoyed by those marrying according to the usages of Jews and Quakers, and would undoubtedly and justifiably resent non-religious belief organisations being accorded that privilege.³⁸

Consequently, the Commission considered that activating the order-making power in the Marriage (Same Sex Couples) Act 2013, to permit marriages according to the rites of non-religious belief organisations, was not a “viable option”.³⁹

The scoping paper did not set out specific proposals for reform. Instead, it included a list of questions, covering each of the stages of getting married, which the Law Commission considered would need to be considered in any review.

5.2 Government response

In January 2016, the then Justice Minister, Lord Faulks said that the Government was carefully considering the Law Commission report and would respond in due course.⁴⁰

Shadow Equalities Minister, Baroness Thornton, asked whether it might be possible to deal solely with the issue of humanist marriage:

Can the Minister say whether it would be possible, and indeed preferable, for a modest extension of the law to accommodate humanist marriage rather than overhauling marriage law, as recommended by the Law Commission report? If Scotland and other countries can do this in a simple way, should England and Wales not be able to do so as well?⁴¹

Lord Faulks replied that the Government thought it necessary to consider marriage as a whole.

On 11 September 2017, the then Justice Minister, Dominic Raab, wrote to the Law Commission to say that “now is not the right time to develop options for reform to marriage law. As you will know, the family justice system is under significant pressure at present, from a sustained increase in public and private law cases”.⁴²

However, in the 2018 Budget, the Government announced that, in connection with promoting greater choice of wedding venues, it had asked the Law Commission to propose options for reform:

England and Wales have outdated laws about how and where couples can marry. The government has asked the Law

³⁸ [Law Commission, Getting Married A Scoping Paper, 17 December 2015](#), paragraph 3.19

³⁹ Ibid paragraph 3.20

⁴⁰ [HL Deb 21 January 2016 c902](#)

⁴¹ [HL Deb 21 January 2016 c902](#)

⁴² [Letter from Dominic Raab MP to Professor Hopkins on marriage laws](#), 11 September 2017

Commission to propose options for a simpler and fairer system to give modern couples meaningful choice. This will include looking at reducing unnecessary red tape and lowering the cost of wedding venues for couples.⁴³

5.3 Law Commission review launched

On 28 June 2019, the Government announced the launch of a Law Commission review of the law governing how and where marriages can take place in England and Wales.⁴⁴

The Law Commission's [full terms of reference](#) are available on the Law Commission website and include:

The review ... will seek to provide recommendations for a reformed law of weddings that allows for greater choice within a simple, fair, and consistent legal structure.

Five principles will underpin recommendations for reform:

- (1) Certainty and simplicity;
- (2) Fairness and equality;
- (3) Protecting the state's interest;
- (4) Respecting individuals' wishes and beliefs; and
- (5) Removing any unnecessary regulation, so as to increase the choice and lower the cost of wedding venues for couples.⁴⁵

The terms of reference referred to the nature of the recommendations which the Law Commission might make in connection with humanist weddings:

To this end, the Law Commission will make recommendations regarding:

(...)

How the law should be reformed in relation to who can solemnize a marriage and how it could be reformed to enable a wider range of persons to solemnize a marriage. This will include how marriage by humanist and other non-religious belief organisations could be incorporated into a revised or new scheme, and how provision could be made for the use of independent celebrants, but the Law Commission will not make recommendations as to whether the groups who can solemnize marriages should be expanded.⁴⁶

As part of the project, the Law Commission is considering:

- The legal preliminaries that should be required prior to a wedding.
- Where weddings should be able to take place, considering for example weddings outdoors, at sea, and on military sites, with a view to removing restrictive regulations.
- Who should be able to solemnize a marriage, including considering how a scheme could include weddings

⁴³ HM Treasury, [Budget 2018](#), HC1629, 29 October 2018, paragraph 5.52, p80

⁴⁴ Gov.UK, [First ever marriage review to free-up dream wedding venues](#), 28 June 2019

⁴⁵ Law Commission, [Terms of Reference – Weddings Project](#), 29 June 2019, paragraphs 1.1-1.2

⁴⁶ *Ibid*, paragraph 1.3(3)

conducted by non-religious belief organisations and independent celebrants. The Law Commission will not, however, be making recommendations on whether as a matter of policy new groups should be allowed to conduct legally binding weddings.

- Whether specific vows should be required during a ceremony.
- How marriages should be registered.
- What the consequences should be for couples who do not comply with any requirements.⁴⁷

5.4 Law Commission consultation paper

The Law Commission had intended to begin its consultation in spring 2020. However, because of the Covid-19 pandemic, it decided to postpone this.

On 3 September 2020, the Law Commission published [Getting Married: A Consultation Paper on Weddings Law](#),⁴⁸ together with a [summary paper](#); a [Welsh summary paper](#); an [at-a-glance summary](#); and [an easy read summary](#).

The consultation will close on 3 December 2020.

New scheme proposed

The Law Commission provisionally proposes a new scheme which it considers would make the law “simple, fair and certain”:

In our initial view, it would protect both the state’s legitimate interest in weddings law and individuals’ interests – in both cases to provide clarity and certainty about whether a marriage is legally recognised, and to protect against forced and sham marriages. At the same time, our scheme seeks to remove regulation that goes beyond what is necessary to protect the state’s interest and the interests of individuals. By ensuring that the law does not regulate weddings unnecessarily and unjustifiably, our proposed scheme seeks to allow all couples more freedom of choice in getting married. It would enable all couples to have a wedding ceremony that is meaningful to them, protecting their freedom of expression and belief.⁴⁹

The Law Commission has provided the following general summary of its proposals:

To modernise and improve wedding law, our proposals include changes that would:

- Allow weddings to take place outdoors, for example on beaches, in parks, in private gardens and on the grounds of current wedding venues.
- Allow weddings to take place in a wider variety of buildings (for example in private homes) and on cruise ships.

⁴⁷ Law Commission, [Weddings](#), [accessed 17 September 2020]

⁴⁸ [Law Commission Consultation Paper No 247, Getting Married: A Consultation Paper on Weddings Law](#), 3 September 2020

⁴⁹ Law Commission, [Getting married: a summary of the weddings law Consultation Paper](#), September 2020, p15

- Offer couples greater flexibility over the form their wedding ceremonies will take, enabling them, if they desire, to use a variety of ceremonies (religious and non-religious) to mark their weddings.
- Simplify the process and remove unnecessary red tape to make it fair to couples, more efficient, and easier to follow. For example, couples will be able to complete the initial stage of giving notice of their intended wedding online or by post, rather than having to do so in person.
- Provide a framework that could allow non-religious belief organisations (such as Humanists) and/or independent celebrants to conduct legally binding weddings.
- Ensure that fewer weddings conducted according to religious rites result in a marriage that the law does not recognise at all.⁵⁰

Regulation based on officiant

One of the features of the new scheme is that regulation would be based on the officiant rather than on the building in which the wedding takes place. This would enable weddings to take place at a much greater variety of venues than is currently permitted, including outdoors. The law would prescribe the role and responsibilities of officiants and the categories of people who could act in that role.

Chapter 5 of the consultation paper sets out the Law Commission's provisional proposals in connection with officiants, including their duties and responsibilities, the process for their authorisation, and the criteria that officiants should have to meet.

The Law Commission's terms of reference provide that they "will not make recommendations as to whether the groups who can solemnize marriages should be expanded". Therefore, the Commission does not consider whether humanists and other non-religious belief organisations should be able to solemnize weddings. However, the terms of reference do require the Law Commission to consider how a new system could include weddings conducted by non-religious belief organisations and independent celebrants if it were decided that the law should allow these groups to perform legally binding weddings.

In considering the criteria that officiants should have to fulfil, the Law Commission set out how its proposals could relate to non-religious belief organisations (such as humanists):

As we discuss above, our scheme aims to minimise the differences between religious and non-religious belief organisations as far as possible. In thinking about the criteria that an officiant should need to satisfy, we have been mindful of the human rights considerations discussed above.

While non-religious belief organisations do not have the same history of conducting legally binding ceremonies, we do not think that this is a reason to regulate such organisations more closely. Many of them will have a long history of conducting non-legally binding ceremonies. Humanists UK, for example, has told us of the number of ceremonies it has conducted. Therefore, we

⁵⁰ Law Commission, [Weddings](#), [accessed 17 September 2020]

provisionally propose that, if Government decides to enable non-religious belief organisations to conduct weddings, such organisations should be entrusted with ensuring that the persons they are nominating are “fit and proper” persons.

All non-religious belief organisations will, however, be in the same position as those religious organisations that have not previously conducted legally binding weddings in England and Wales. They would therefore be expected to show that they have processes in place for training their celebrants as officiants, and for carrying out continuing professional development. Organisations such as Humanists UK have shared their training material with us and emphasised how thorough their practices are.⁵¹

The Law Commission also proposes that, if the Government enables non-religious belief organisations, as defined, to officiate at weddings, the relevant governing authority of the organisation should be responsible for nominating officiants.

Other proposals

Other features of the Law Commission’s proposed scheme include:

- Couples should be able to choose the form of their ceremony, as agreed to by the officiant and subject to any additional requirements imposed by the religious (or non-religious belief) body conducting the wedding.
- During every wedding ceremony, the parties should be required to express their consent to be married to each other, whether orally or otherwise, but there would be no requirement to include prescribed words.
- Weddings should be legally permitted to take place anywhere.

5.5 What will happen next?

After analysing the responses, the Commission intends to publish its final report, with recommendations for reform to Government, in the second half of 2021.⁵²

⁵¹ [Law Commission Consultation Paper No 247, Getting Married: A Consultation Paper on Weddings Law](#), 3 September 2020, paragraphs 5.161-163, footnotes omitted

⁵² Law Commission, [Weddings](#), [accessed 17 September 2020]

6. The position in Scotland and Northern Ireland

The Law Commission has set out how the law differs in respect of humanist marriage in Scotland and Northern Ireland:

Jurisdictions closer to home have recently reformed their laws to give couples more choice and to simplify and clarify the law. A notable trend in these reforms has been a move away from building-based models, towards organisation- or celebrant-based models.

(1) Scotland has recently reformed its law, in the Marriage and Civil Partnership (Scotland) Act 2014. Rather than having separate preliminaries for Church of Scotland weddings, Scots law provides for universal civil preliminaries, using a schedule system which combines a couple's authority to marry and the document for the registration of their marriage. There are no restrictions on where religious (or non-religious belief) weddings can take place, and the rules for civil weddings allow for weddings to take place outdoors.⁵³ It operates an organisational model, in which approved celebrants belonging to both religious bodies and non-religious belief bodies conduct legal weddings. Civil weddings continue to be conducted by district or assistant registrars.⁵⁴

(2) The law in Northern Ireland was also reformed this century, by the Marriage (Northern Ireland) Order 2003. The Order provides for universal civil preliminaries, using a schedule system. Religious weddings are conducted by officiants, appointed on application by their religious body; civil weddings are conducted by registrars or deputy registrars. There is no requirement that a religious wedding must be conducted in a place of worship. Instead, a religious wedding must simply be conducted in the place specified in the marriage schedule. Conversely, a civil wedding can only take place in a registration office or in an approved place; the local registration authority approves places, including outdoor locations, in accordance with regulations. The system for approving places is similar to the approved premises system in England and Wales.⁵⁵ Since the Court of Appeal decision on Humanist weddings, Humanist celebrants are being authorised to solemnize civil marriages.⁵⁶

⁵³ Footnote to text: "Marriage (Scotland) Act 1977"

⁵⁴ Footnote to text: "There are four categories of religious and belief celebrants who can solemnize weddings: see Marriage (Scotland) Act 1977, s 8(1)"

⁵⁵ Footnote to text: "Marriage (Northern Ireland) Order 2003 (SI 2003 No 413); Marriage Regulations (Northern Ireland) 2003 (SI 2003 No 468)"

⁵⁶ Footnote to text: "Re Smyth's Application for Judicial Review [2018] NICA 25"

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