



## 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 and section 7 deal respectively with 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 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 (formerly the British Humanist Association) has campaigned for the law to be changed to allow humanist celebrants to conduct legal marriages.

### **Proposals for reform and review of law**

Proposals by the Labour Government to give couples a greater choice of where to marry, as part of a more general reform of civil registration, did not proceed.

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 launched a Law Commission review of the law governing how and where marriages can take place in England and Wales. The detailed review, including a final report, is expected to last two years.

The Law Commission has stated that the remit for the project includes developing a scheme that would allow non-religious belief groups, such as humanists, and independent celebrants to celebrate weddings, enabling the Government to widen the routes to legally binding ceremonies if it chooses to do so.

The Government has said that it will decide on provision for humanist marriage on the basis of the Law Commission's recommendations.

# 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 Coalition Government's consultation paper, [Marriages by Non-Religious Belief Organisations](#), sets out information about the required legal preliminaries, the form of marriage ceremony, and the celebrant.<sup>1</sup>

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.

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<sup>1</sup> Ministry of Justice, [Marriages by Non-Religious Belief Organisations](#), 26 June 2014, Part 2. All web material accessed 15/16 July 2019 unless stated otherwise.

## 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.

Humanists UK (formerly, the British Humanist Association) provides non-legally binding humanist marriage ceremonies in England and Wales and has said that about 20% of the couples to whom they provide these ceremonies do not have an additional legally valid civil ceremony.<sup>2</sup>

In 2014, the Ministry of Justice said that six to eight hundred humanist weddings take place in England and Wales each year.<sup>3</sup>

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, 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.

(...)

<sup>2</sup> Ministry of Justice, [Marriages by Non-Religious Belief Organisations](#), 26 June 2014, p16. Footnote to text gives the source as BHA submission to MoJ in response to the Marriage (Same Sex Couples) Act, September 2013.

<sup>3</sup> Ibid., p3.

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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.

Humanist marriages have long been legally recognised in Scotland and the Republic of Ireland, and have had a transformative effect in both countries. They gained legal recognition in Scotland in 2005, and have risen in number from 85 in the first year to almost 7,000 in 2017 – some 20% of the total. Humanist Society Scotland provides more marriage ceremonies than the Church of Scotland or any other religion or belief group. In the Republic of Ireland, humanist marriages gained legal recognition in 2012. In 2018, nine percent of legally recognised marriages were humanist, placing the Humanist Association of Ireland only behind the Catholic Church and civil marriages.

In Northern Ireland, a 2018 Court of Appeal judgment on a human rights challenge led to the first legally recognised humanist marriages happening there that August. This judgment should logically mean the UK Government must now act for England and Wales as well. In Jersey, a new law giving recognition to humanist marriages came into force in 2018, with the first humanist ceremonies occurring in 2019. Guernsey is currently planning to also extend recognition.<sup>4</sup>

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”.<sup>5</sup>

The Coalition Government stated that, “whilst the BHA 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”.<sup>6</sup>

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<sup>4</sup> Humanists UK, [Legal recognition of humanist marriages](#)

<sup>5</sup> Ibid

<sup>6</sup> Ministry of Justice, [Marriages by Non-Religious Belief Organisations](#), 26 June 2014, p17.

### 3. Labour Government proposals to reform civil registration

The Labour Government proposed that couples would be given a greater choice of where to marry, as part of a more general reform of civil registration.<sup>7</sup> Regulation of marriages was to be based on the celebrant (the person responsible for the solemnisation of the marriage) rather than the building in which the marriage takes place.<sup>8</sup>

It was intended that legislative changes to civil registration would be brought about by using the order-making powers in the *Regulatory Reform Act 2001*. The proposals were to be implemented in two stages: first those relating to the registration of births and deaths and then, subsequently, those relating to marriage. However, both the Parliamentary Committees that considered the proposals relating to registration of births and deaths concluded that they were not appropriate for the regulatory reform order procedure.<sup>9</sup> In March 2005, Stephen Timms, who was then Financial Secretary to the Treasury, said that, in the light of the Committees' decision, he no longer intended to put forward a draft Regulatory Reform Order to reform marriage law.<sup>10</sup>

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<sup>7</sup> Further information is provided in Library briefing paper, [Marriage Venues](#), Number 02842, 7 November 2018.

<sup>8</sup> CM5355, [Civil Registration: Vital Change – Birth, Marriage and Death Registration in the 21<sup>st</sup> Century](#), January 2002 p21.

<sup>9</sup> Regulatory Reform Committee, [Proposal for the Regulatory Reform \(Registration of Births and Deaths\) \(England and Wales\) Order 2004](#), 20 December 2004, HC 118, Delegated Powers and Regulatory Reform Committee, [Proposal for the draft Regulatory Reform \(Registration of Births and Deaths\) \(England and Wales\) Order 2004](#), 14 December 2004, HL 14.

<sup>10</sup> [HC Deb 1 March 2005 c77WS](#)



## 4. Coalition Government consultation

### 4.1 Marriage (Same Sex Couples) Act 2013: provision for law to be reviewed

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.<sup>11</sup>

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.<sup>12</sup> 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.

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.<sup>13</sup> The Act includes an order-making power to amend any England and Wales legislation, both primary and secondary.

### 4.2 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;

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<sup>11</sup> See, for example, Library Briefing Paper RP 13/22, [Marriage \(Same Sex Couples \) Bill Committee Stage Report](#), 14 March 2013, pp14-15.

<sup>12</sup> [HL Deb 10 July 2013 c302](#) (amendment 90)

<sup>13</sup> [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. It spoke of preserving the religious protections “that are fundamental to the legislation which has recently come into force to enable the marriage of same sex couples”.<sup>14</sup>

### 4.3 Coalition Government response to consultation

On 18 December 2014, the Coalition Government published its [response](#) to the consultation paper.<sup>15</sup>

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,<sup>16</sup> 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.<sup>17</sup>

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

<sup>14</sup> Ministry of Justice, [Marriages by Non-Religious Belief Organisations](#), 26 June 2014, p26

<sup>15</sup> Ministry of Justice, [Marriages by Non-Religious Belief Organisations: Summary of Written Responses to the Consultation and Government Response](#), 18 December 2014.

<sup>16</sup> British Humanist Association, now Humanists UK

<sup>17</sup> Ministry of Justice, [Marriages by Non-Religious Belief Organisations: Summary of Written Responses to the Consultation and Government Response](#) pp3-4

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through the order-making power in section 14 of the 2013 Act, which is limited to making provision for marriages by people in non-religious belief organisations.<sup>18</sup>

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.<sup>19</sup>

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.<sup>20</sup>

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.

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.<sup>21</sup>

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

<sup>19</sup> Ibid p4.

<sup>20</sup> Ibid p5.

<sup>21</sup> Ministry of Justice, [Marriages by Non-Religious Belief Organisations: Summary of Written Responses to the Consultation and Government Response](#), 18 December 2014, p5.

## 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. The aim was “to identify and provide an initial analysis of the issues that needed to be addressed in order to develop proposals for the reform of marriage law”.<sup>22</sup>

In December 2015, the Law Commission published [Getting Married A Scoping Paper](#),<sup>23</sup> together with an [Executive Summary](#).<sup>24</sup>

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.<sup>25</sup>

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”.<sup>26</sup> 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

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<sup>22</sup> Law Commission, [Weddings](#)

<sup>23</sup> [Law Commission, Getting Married A Scoping Paper, 17 December 2015](#)

<sup>24</sup> [Law Commission, Getting Married A Scoping Paper Executive Summary, 17 December 2015](#)

<sup>25</sup> [Law Commission, Getting Married A Scoping Paper Executive Summary, 17 December 2015](#), paragraph 1.3.

<sup>26</sup> *Ibid* paragraph 1.44

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.<sup>27</sup>

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.<sup>28</sup>

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”.<sup>29</sup>

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.<sup>30</sup>

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?<sup>31</sup>

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”.<sup>32</sup>

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<sup>27</sup> Ibid paragraph 1.46

<sup>28</sup> [Law Commission, Getting Married A Scoping Paper, 17 December 2015](#), paragraph 3.19

<sup>29</sup> Ibid paragraph 3.20

<sup>30</sup> [HL Deb 21 January 2016 c902](#)

<sup>31</sup> [HL Deb 21 January 2016 c902](#)

<sup>32</sup> [Letter from Dominic Raab MP to Professor Hopkins on marriage laws](#), 11 September 2017.

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 performed by Humanists UK.

On 19 June 2018, in response to a Parliamentary Question asking about both this APPG report and the broader issue of whether the Government intended to legislate to enable humanist marriage, Lord Keen of Elie, spokesperson for Ministry of Justice business in the House of Lords, stated that “the Government welcomes the engagement of the All-Party Parliamentary Humanist group and we are giving careful consideration to the findings of the group’s inquiry.”<sup>33</sup>

### 5.3 2018 Budget announcement

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 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.<sup>34</sup>

### 5.4 Law Commission review launched

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

The two-year project, which is the first of its kind, will review the current laws on how and where marriages can take place – many of which date back to the 19th Century.

It will look at removing unnecessary red-tape to increase the choice and lower the cost of venues. It could open up opportunities for civil ceremonies at sea, in private homes or military sites for service personnel.

Subject to the findings from the independent Law Commission the changes would ensure couples can marry in a way that is individually meaningful for them, while continuing to preserve the dignity of marriage ceremonies.<sup>35</sup>

The Government said that, separately, it would accelerate plans to allow civil weddings and civil partnerships to be held outside and would look to implement these through secondary legislation, subject to any necessary consultation. Any new venues would have to meet the existing test of solemnity and dignity.

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<sup>33</sup> [PO HL 8348, 19 June 2018](#)

<sup>34</sup> HM Treasury, [Budget 2018](#), HC1629, 29 October 2018, paragraph 5.52, p80

<sup>35</sup> Gov.UK, [First ever marriage review to free-up dream wedding venues](#), 28 June 2019

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The Law Commission has said that it aims “to propose options for a simple and fair system to give modern couples meaningful choice about their wedding ceremony”. The project will:

- consider where a wedding should be able to take place
- consider how to remove unnecessary red tape which can hamper choice and increase the cost of wedding venues
- aim to ensure that the law works for all couples and all faiths, including those who are not as well served by the current buildings-based system
- seek to make the law more simple and certain, so that it is clear whether a couple’s marriage is legally valid.<sup>36</sup>

The Law Commission has also stated that the remit for the project includes developing a scheme that would allow non-religious belief groups, such as humanists, and independent celebrants to celebrate weddings, enabling the Government to widen the routes to legally binding ceremonies if it chooses to do so.<sup>37</sup>

As part of the project, the Law Commission intends to consider:

- 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 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, which is a decision for Government.
- 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.<sup>38</sup>

The Law Commission’s [full terms of reference](#) are available on the Law Commission website.

### 5.5 What will happen next?

The Law Commission has summarised its next steps:

The Commission will now begin its work on the project and prepare questions and provisional proposals for reform for a public consultation. The detailed review including a final report is expected to last two years.<sup>39</sup>

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<sup>36</sup> Law Commission, [Law Commission begins work on weddings reform](#), 1st July 2019

<sup>37</sup> Ibid

<sup>38</sup> Law Commission, [Weddings](#)

<sup>39</sup> Ibid

On 10 July 2019, in a written answer to a Lords Parliamentary Question, Lord Keen of Elie said that the Government would await the Law Commission's recommendations before deciding what to do next in connection with humanist marriage:

Asked by Baroness Whitaker on 4 July 2019

Marriage: Humanism

To ask Her Majesty's Government whether they will grant legal recognition to humanist marriages; and if not, what are the reasons for not doing so.

Answered by Lord Keen of Elie on 10 July 2019:

The Law Commission review that the Government announced last month is a fundamental review of the law on how and where people can legally marry in England and Wales. As part of that review, we have invited the Law Commission to make recommendations about how marriage by humanist and other non-religious belief organisations could be incorporated into a revised or new scheme for all marriages that is simple, fair and consistent. The Government will decide on provision on the basis of the Law Commission's recommendations.<sup>40</sup>

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<sup>40</sup> [PQ HL16967 \[on Marriage: Humanism\], 10 July 2019](#)



## 6. How does the position differ in Scotland?

In Scotland, the authority to solemnise a marriage is based on the celebrant rather than the building in which the ceremony takes place. Scotland allows for the solemnisation of humanist marriages which are recognised by the state.

From 2005, the Registrar General for Scotland authorised humanist marriage celebrants on a temporary basis, under Section 12 of the Marriage (Scotland) Act 1977. Provisions in the [Marriage and Civil Partnership \(Scotland\) Act 2014](#) put religious and belief bodies on the same footing.

On 14 February 2017, the [Civil Partnership, Marriage Between Persons of Different Sexes and Same Sex Marriage \(Prescribed Bodies\) \(Scotland\) Amendment Regulations 2016](#), came into force.<sup>41</sup>

The [policy note](#) to the regulations explained the system to date, and the changes that were being made in respect of humanist celebrants:

The current instrument amends [existing legislation] to add Humanist Society Scotland (“HSS”) to the three lists of prescribed bodies for the purpose of solemnising opposite sex marriage, solemnising same sex marriage and registering civil partnership respectively.

[...]

At the moment, HSS nominate persons to the Registrar General to be registered as celebrants under section 9 of the 1977 Act<sup>42</sup> and section 94B of the 2004 Act.<sup>43</sup> By virtue of this instrument, all HSS celebrants will automatically be able to solemnise opposite and same sex marriage and register civil partnership by virtue of HSS being prescribed.

A body can only be prescribed by Scottish Ministers under the 1977 and 2004 Acts if:

- it requests Scottish Ministers to prescribe it - section 8(1A)(a) of the 1977 Act (for opposite sex marriage); section 8(1C)(a) of the 1977 Act (for same sex marriage) and section 94A(2)(a) of the 2004 Act (for civil partnership). HSS have asked to be prescribed.
- it is a “religious or belief body” under section 8(1)(a)(ii) of the 1977 Act (for opposite sex marriage); section 8(1B)(a)(i) (for same sex marriage) and section 94A(1)(a)(i) of the 2004 Act (for civil partnership). Under section 26 of the 1977 Act and section 135 of the 2004 Act, the definition of a “religious or belief body” is “an organised group of people — (a) which meets regularly for religious worship, or (b) the principal object (or one of the principal objects) of which is to uphold or promote philosophical beliefs and which meets regularly for that purpose”. The Scottish Ministers are satisfied that HSS meets the definition of

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<sup>41</sup> SSI 2016/427

<sup>42</sup> The *Marriage (Scotland) Act 1977*, as amended.

<sup>43</sup> The *Civil Partnership Act 2004*, as amended.

“religious or belief body” as the object for which it is established is the advancement of humanist philosophical beliefs and it meets regularly for that purpose.

There is provision, not yet in force, in the 1977 and 2004 Acts that bodies must meet “qualifying requirements” which may be laid down by the Scottish Ministers in Regulations, before being prescribed. No qualifying requirements are yet in place: the Scottish Ministers will need to consult with religious and belief bodies and other interested parties before laying any down. As a result, the decision on whether to prescribe a religious or belief body which has made a request is entirely at the discretion of the Scottish Ministers.

In exercising their discretion to prescribe HSS, Scottish Ministers have taken a number of factors into account, as outlined below, and have consulted with HSS and the Registrar General.<sup>44</sup>

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<sup>44</sup> [Policy note to the Civil Partnership, Marriage Between Persons of Different Sexes and Same Sex Marriage \(Prescribed Bodies\) \(Scotland\) Amendment Regulations 2016, SSI 2016/427](#), p2.

## 7. Northern Ireland

### 7.1 Marriage in Northern Ireland

In Northern Ireland, marriages are governed by the [Marriage \(Northern Ireland\) Order 2003](#). A 2017 court judgement summarised the legislative position:

[22] The 2003 Order introduced a uniform system of civil preliminaries for both religious and civil marriages. It shifted the emphasis in relation to religious marriages from a system based on the registration of buildings to one based on the registration of officiants and allowed for civil marriages to be solemnised in a wider range of locations, subject to the control of the local registration district.

[23] Article 9 of the Order provides that a marriage may only be solemnised by “by an officiant” or “a person appointed under Article 31”.

[24] It provides for two types of marriages namely “religious marriages” and “civil marriages”. The Order provides a uniform system of civil preliminaries for both types of marriage. The Order goes on to provide that a religious body may apply to the Registrar General for a member named in the application to be registered as empowered to solemnise marriages in Northern Ireland and sets out the procedure for such an application. A person appearing on the register is entitled to act an “officiant” at a marriage. Under Article 14 of the Order the Registrar General may grant to a member of a religious body a temporary authorisation to solemnise a religious marriage....<sup>45</sup>

### 7.2 Judicial review

In June 2017, Laura Lacle (also known as Laura Smyth) sought judicial review after the General Register Office in Northern Ireland (GRO) refused to grant temporary authorisation under Article 14 of the 2003 Order for a humanist celebrant to solemnise her wedding.

The [judgement](#) was handed down on 9 June 2017.<sup>46</sup> The Court granted a declaration that the decision of the GRO “was in breach of section 6 of the Human Rights Act 1998 as contrary to the applicant’s rights under Article 9 and Article 14 ECHR [the European Convention on Human Rights]”.<sup>47</sup> Article 9 concerns freedom of religion or belief, while article 14 concerns discrimination.

The judge ordered the Department of Finance to direct the GRO to grant the application for temporary authorisation.

The Court did not make any declaration of incompatibility in respect of the Order.

Northern Ireland’s Attorney General, the Department of Finance, and the GRO appealed the decision. On 19 June 2017, the original order

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<sup>45</sup> Smyth re. Judicial Review, [\[2017\] NIQB 55, COL10315](#)

<sup>46</sup> Smyth re. Judicial Review, [\[2017\] NIQB 55, COL10315](#)

<sup>47</sup> Ibid, p42

was stayed pending further consideration, but Ms Lacle and her fiancée were permitted to be married by a humanist celebrant.

### 7.3 Court of Appeal decision

In its [judgement](#) delivered on 28 June 2018, the Court of Appeal concluded that the statutory prohibition of a humanist celebrant as the person solemnising Ms Lacle's marriage would have constituted discrimination in this particular case. However, the facility to apply for temporary authorisation for a humanist celebrant to conduct marriages provided a basis for avoiding such discrimination:

[61] We accept that the statutory prohibition of a humanist celebrant as the person solemnising the respondent's marriage would have constituted discrimination pursuant to Articles 9 and 14 ECHR in the case of this respondent. Having examined the statute we consider that Article 31 of the 2003 Order provides a basis for avoiding such discrimination by enabling the appointment of Ms Russo without having to utilise the interpretive tool provided by section 3 of the Human Rights Act 1998 to alter the wording of Article 14 of the 2003 Order. The fact that the person solemnising the marriage is appointed pursuant to Article 31 of the 2003 Order rather than Article 14 of the said Order does not in our view give rise to any difference of treatment. Accordingly we allow the appeal, quash the mandatory Order made by Colton J and set aside his declaration but otherwise agree with his carefully reasoned judgment.<sup>48</sup>

The Court held that it was the Registrar General's responsibility to act in a way which avoids discrimination:

[59] ... If the Registrar General is satisfied that a couple want a humanist celebrant to officiate at their marriage or civil partnership in order to express their humanist beliefs he should accommodate that request if content that the proposed celebrant will carry out the solemnisation of the marriage according to law. Whether or not the authorisation should be for a single marriage or a period of time is a matter for the judgement of the Registrar General exercised lawfully.<sup>49</sup>

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<sup>48</sup> [Smyth's \(Laura\) Application](#) [2018] NICA 25

<sup>49</sup> [Smyth's \(Laura\) Application](#) [2018] NICA 25

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