

MARRIAGE (SAME SEX COUPLES) BILL

GOVERNMENT RESPONSE TO THE 4th REPORT OF THE DELEGATED POWERS AND REGULATORY REFORM COMMITTEE

1. The Delegated Powers and Regulatory Reform Committee reported on the Marriage (Same Sex Couples) Bill, in its Fourth Report.
2. The Committee's comments and recommendations on particular powers in the Bill are set out below, together with the Government's response.

Clause 6 – Registration of armed forces chapels

3. The Committee noted that clause 6 contains a power for the Secretary of State to specify in regulations the consent regime for the registration, and cancellation of the registration, of armed forces chapels for the solemnization of same sex marriages, while elsewhere in the Bill the consent regime for civilian places of worship is specified on the face of the Bill. As a consequence, the Committee recommended that more provision governing the consents required should be included on the face of the Bill.

Government response

4. Although most military chapels are owned by the Crown, some are not, and some chapels are consecrated. Many are shared to a greater or lesser extent by different religious organisations. The arrangements governing registration, and cancellation of registration, of military chapels for the solemnization of same sex marriages, will therefore need to deal with this complex landscape, balancing the concerns of religious organisations with the need for the Secretary of State to take into account the interests of same sex couples who may wish to marry in a military chapel, and bearing in mind the Crown's obligations under the European Convention on Human Rights, as described in the memorandum to the Committee. Detailed consideration will be required to establish the appropriate mix of approaches governing registration and cancellation, and the resulting provision is liable to be more complex than is appropriate to include on the face of the Bill. For these reasons, the Government considers that making this provision through regulations, subject to affirmative resolution, is appropriate. Parliament will of course have the opportunity to consider and debate the ultimate proposals before they are made.

Clause 9 – Conversion of civil partnership into marriage

5. The Committee did not consider it appropriate to describe the powers conferred by clause 9 as being administrative in nature as they will set out the entire process under which a civil partnership is to be converted into a marriage. Accordingly, the Committee recommended that

regulations under clause 9 should be made by the Secretary of State, with the affirmative procedure applying to the first exercise of the powers, and with the regulations thereafter being subject to negative resolution.

Government response

6. The Government accepts the Committee's recommendation and has decided to table an amendment to the Bill so that the regulations will be made by the Secretary of State and be subject to the affirmative procedure on the first exercise of the power, and negative thereafter. The Secretary of State will set out the framework for the conversion process and may also wish to use these regulations to confer powers on the Registrar General to make subsequent additional regulations about administrative matters. If we are giving such powers to the Registrar General in regulations made by the Secretary of State, we need to make this clear on the face of the Bill to avoid legal challenge on the grounds of unlawful sub-delegation. The Government therefore proposes to table an amendment to the Bill to include a provision permitting the Secretary of State to confer such powers on the Registrar General. The amendment will provide that any regulations made by the Registrar General in the exercise of sub-delegated powers would normally be subject to the negative resolution procedure. The statutory instrument through which the Secretary of State sub-delegates those powers could, however, make provision applying a different procedure or provide for no procedure to apply.

Schedule 1 – Registration of buildings

Section 43D

7. The Committee did not consider that the power in new section 43D of the Marriage Act 1949 to make regulations modifying the usual procedure is consistent with the existing approach in that Act. The Committee noted that there is no requirement for the powers to be limited to procedural and administrative matters and they could be used to incorporate provisions which have substantive effect. It also noted that section 43D(2)(d) expressly allows provision to be made as to fees, with nothing on the face of the legislation restricting the amounts that can be set. Accordingly, the Committee recommended that the scope of the powers conferred by new section 43D warrants at least the negative procedure, with the regulations being made by the Secretary of State, and with the affirmative procedure applying to the first exercise of the powers.

Government response

8. The Government has carefully considered the Committee's recommendation but has concluded that the affirmative procedure would be disproportionate to the nature of the regulations which would

be drafted. However, to make the limited scope of the power clearer, the Government proposes to amend this provision in a way which clarifies that the regulations are purely procedural. In addition, the Government proposes to amend the power so that the regulations are made by the Secretary of State and are subject to the negative resolution procedure.

Section 44C

9. The Committee considered that new section 44C of the Marriage Act 1949 does not contain any substantive provisions and the wide description of buildings to which the powers in that section apply contribute to this being an inappropriate delegation of powers. Accordingly, it drew section 44C to the attention of the House, with a recommendation that, unless more provision can be included in the Bill itself to limit the scope of the power and the nature of the buildings to which it applies, it is an inappropriate delegation of powers.

Government response

10. The Government notes the Committee's view but believes that members may not have fully appreciated that section 44C only applies to religious premises (as a result of the reference to section 26A, which itself refers to buildings certified as places of religious worship which are registered under section 43A). Nevertheless, the Government recognises that it would be helpful to make this power's limited scope clearer and will therefore table a clarifying amendment.

Schedule 2, Part 1 – Treatment of English and Welsh marriages of same sex couples under the law of Scotland and Northern Ireland

11. The Committee considered that the order-making powers conferred by paragraphs 1(2) and 2(2) of Schedule 2 to the Bill should at least be subject to the affirmative procedure. The Committee also invited the House to consider, in the light of any further explanation given as to the exercise of these powers, whether the affirmative procedure is sufficient.

Government response

12. The Government accepts the recommendation that orders made under paragraphs 1(2) and 2(2) of Schedule 2 should be subject to the affirmative procedure. As the Secretary of State will also need the consent of the Scottish Ministers or the Department of Finance and Personnel (for Northern Ireland) where she is legislating in respect of matters within their respective legislative competences (in accordance with subsection 16(6)), the Government considers that the affirmative procedure is sufficient.

**Schedule 4, paragraph 27(3) – Effect of extension of marriage:
further provision**

13. The Committee considered that the power to make provision modifying or disapplying any of the equivalence provisions (which are set out in clause 11(1) and (2) and clause 9 (7)(b)) in their application in specified cases should be subject at least to the affirmative procedure, for reasons similar to those it gave in respect of paragraphs 1(2) and 2(2) of Schedule 2.

Government response

14. The Government accepts the Committee's recommendation and will table an amendment to make the exercise of this power subject to the affirmative procedure.

**Schedule 6, Part 3 – Marriage of armed forces personnel outside
of the UK**

15. The Committee considered that the power to make provision about marriages of same sex couples on armed forces bases overseas was inconsistent with the "quadruple lock" as it does not explicitly prohibit marriage of a same sex couple in accordance with the rites of the Church of England or require certain consents to be given for the solemnization of same sex marriages on particular premises.

Government response

16. The Government accepts the Committee's recommendation. We propose to amend paragraph 9(2)(a) so that Part 3 of Schedule 6 will explicitly prohibit marriage of a same sex couple according to the rites of the Church of England and the Church in Wales on the face of the Bill (instead of doing this through secondary legislation). We will also table amendments which will stipulate that the Order in Council must make provision as to consents to the solemnization of marriages of same sex couples according to religious rites.