



HM Government

Same-sex religious marriage in Northern Ireland

Government consultation

20 January 2020

FOREWORD BY THE SECRETARY OF STATE FOR NORTHERN IRELAND

During the passage of the Northern Ireland (Executive Formation etc.) Act 2019, Parliament placed a legal duty on the UK government to legislate to allow same-sex couples to marry and opposite-sex couples to form a civil partnership in Northern Ireland, given the absence of a devolved administration to take forward such reform at that time. The powers under the Act also enable the government to make other related provisions and amendments to the law, including to protect the ability to act in accordance with religious or other belief or opinion in relation to marriage or civil partnership.

The first set of regulations, delivering on the legal duty under section 8(1) of the Act, that will enable same-sex couples in Northern Ireland to have a civil marriage and opposite-sex couples to register a civil partnership, came into force on 13 January 2020.

We now want to ensure that religious bodies are able to choose whether or not to offer same-sex religious marriage, and do not unlawfully discriminate if they refuse to solemnise marriages because of the sex or sexual orientation of the couple. Such protections are already in place in the rest of the UK.

Consulting on these issues will enable us to understand better the particular needs and concerns of the people of Northern Ireland and tailor the regulations accordingly. We will bring forward these regulations as soon as possible in 2020.

I welcome the recent restoration of the Executive and Assembly in Northern Ireland. The New Decade, New Approach Agreement focuses on delivering what matters to citizens in Northern Ireland: better public services, a stronger economy and a fairer society. We will talk to Northern Ireland ministers and departments about the consultation proposals and the regulations that will follow, as we fulfil our commitment to deliver same-sex religious marriage and conversion in Northern Ireland in 2020. We would be grateful to hear views from anyone with an interest in the proposed framework for same-sex religious marriage and religious protections in Northern Ireland set out in this consultation.

The Rt Hon Julian Smith CBE MP

Secretary of State for Northern Ireland

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OVERVIEW

Introduction

While the law relating to marriage and civil partnership is devolved to Northern Ireland, the UK Parliament supported amendments to the Northern Ireland (Executive Formation etc.) Act 2019 (“the NI EF Act”) that meant that if a Northern Ireland Executive was not restored by 21 October 2019, the UK government would then be under a legal obligation to take on the responsibility of legislating to allow same-sex marriage and opposite-sex civil partnerships in Northern Ireland.

The NI EF Act therefore places a legal duty on the UK government, under section 8, to make regulations so that couples are eligible to form same-sex marriages and opposite-sex civil partnerships in Northern Ireland. The NI EF Act also confers power to make other related provisions including the right to convert from a civil partnership to marriage (and vice versa).

Section 8 of the NI EF Act came into force on 22 October, as the Northern Ireland Executive had not been restored by then. Ahead of this, on 21 October 2019, the Secretary of State for Northern Ireland made the following statement in Parliament:

“There are two key areas on which we will consult: how to allow for religious same-sex marriage ceremonies; and the issue of conversion from civil partnership to marriage and vice versa. So that we can tailor the regulations appropriately, there will be a short consultation on these two issues.”

This consultation fulfils that commitment in relation to same-sex religious marriage. There is an accompanying consultation that deals with conversion entitlements in Northern Ireland.

The first set of regulations made under the powers in section 8(1), the Marriage (Same-sex Couples) and Civil Partnerships (Opposite-sex Couples) (Northern Ireland) Regulations 2019, which allow same-sex couples in Northern Ireland to have a civil marriage and opposite-sex couples to form a civil partnership, came into force on 13 January. Further regulations will follow from April 2020, after we have analysed the responses to this consultation.

About this consultation

Purpose

This consultation invites views on the UK government’s proposals for implementing same-sex religious marriage and religious protections in Northern Ireland.

Consultation scope

This consultation covers same-sex religious marriage and protections in Northern Ireland.

Timetable

This consultation will run for five weeks and opens on 20 January 2020 and closes at 11.45pm on 23 February 2020.

Responding to the consultation

The government would welcome feedback from anyone with an interest or view on the proposed shape of this reform, addressing the specific questions listed throughout the consultation document and set out in Annex B.

We would particularly welcome views from:

- Same-sex couples who wish to have a religious marriage;
- Religious organisations that wish to solemnise same-sex marriages in Northern Ireland;
- Religious organisations that do not wish to solemnise same-sex marriages in Northern Ireland; and
- LGBT organisations who may have views on our proposals for enabling same-sex religious marriage.

Our preferred method of receiving your response is via our electronic consultation questionnaire which can be found via the following link:

<https://www.smartsurvey.co.uk/s/F6WA0/>

The email address for responses or queries is:

samesexreligiousconsultation@nio.gov.uk

Postal responses can be sent to:

Same-sex religious marriage consultation
Northern Ireland Office
Stormont House
Stormont Estate
Belfast
BT4 3SH

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

A hard copy of this consultation document is available on request, using the email address provided above.

Consultation principles

This consultation is being conducted in line with the Cabinet Office consultation principles published in January 2016. A copy of the principles can be found at: <https://www.gov.uk/government/publications/consultation-principles-guidance>

It is also being conducted in line with the Northern Ireland Office Equality Scheme which can be found at: <https://www.gov.uk/government/publications/nio-equality-scheme>.

An Equality Screening of the impact of the proposals in this consultation is available on the consultation website at www.gov.uk/nio or can be obtained in hardcopy on request.

Confidentiality

The information you send us may need to be shared within the Northern Ireland Office (NIO), with other relevant government departments and relevant Northern Ireland Civil Service departments. The information might also be published in a summary of responses received and referred to in the published consultation report. The government summary of responses to this consultation and published consultation report will include a list of organisations that responded but not personal names without receiving permission from the individual. Other contact details will not be published.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of this public consultation exercise, it is understood that you consent to its possible disclosure and publication. If this is not the case, you should limit any personal information provided, or omit it entirely. If you want the information in your response to the consultation to be kept confidential, you should state so clearly in your response, although this cannot be guaranteed.

To find out more about the general principles of Freedom of Information and how it is applied in the NIO, please contact: foi@nio.gov.uk

The NIO is the data controller in respect of any personal data that you provide and NIO's Information Charter, which sets out the standards you can expect in respect of the handling of your personal data, can be found at: <https://www.gov.uk/government/organisations/northern-ireland-office/about/personal-information-charter>

Government response

A summary of responses to this consultation and details of the action that the government will take, or has taken, will be published on the government website at www.gov.uk/nio.

The government aims to publish the response within twelve weeks of the consultation closing date.

Structure of the consultation

Part One of this consultation seeks views on our proposals for implementing same-sex religious marriage and the appropriate protections in Northern Ireland. There are 9 questions in relation to these proposals which respondents may wish to answer.

Part Two asks a series of demographic questions.

Part Three provides supplementary information including the full list of consultation questions.

PART ONE - CONSULTATION ON SAME-SEX RELIGIOUS MARRIAGE

1.1 Background

1. Under the Marriage (Northern Ireland) Order 2003 (“the 2003 Order”), two types of marriage ceremony are possible in Northern Ireland: religious and civil. Civil partnerships in Northern Ireland are entirely secular.
2. Religious marriages are solemnised by officiants who are members of a religious body, and who are named in a register kept by the Registrar General (article 11 of the 2003 Order) or temporarily authorised by the Registrar General to solemnise particular marriages, or marriages for a specified period (article 14 of the 2003 Order). Applications for registration must be made by the religious body, but individuals may apply for temporary authority on their own behalf. The 2003 Order does not prescribe where a religious marriage ceremony can take place – such a marriage can be celebrated anywhere agreed between the officiant and the couple. This can, but does not have to be, a religious building. A same-sex religious marriage is not yet possible under the 2003 Order.
3. Civil marriages involve a secular ceremony in which no reference to religion can be made. Such marriages may be solemnised only by someone appointed under article 31 of the 2003 Order, such as a registrar. Following the case of *Smyth*¹, Humanists can also be appointed under article 31 to conduct civil marriages. Civil marriages can take place in a registration office or in a place approved by the local registration authority, but this cannot include a place with a recent or continuing connection with any religious body or religious practice.
4. Now that same-sex couples in Northern Ireland are able to form a civil marriage through the regulations made under section 8(1) of the NI EF Act², we are consulting on how we should enable same-sex religious marriages to take place in Northern Ireland, and how we protect those bodies and individuals that do not wish to solemnise such marriages. Further regulations will follow this consultation.
5. The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 ensure that it is not unlawful discrimination for religious bodies in Northern Ireland (and those acting on their behalf) to provide blessings (ceremonies or events to mark a marriage or civil partnership) for same-sex or for opposite-sex couples exclusively³. These provisions cover both civil and

¹ [2018] NICA 25.

² The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019.

³ See the amendments to the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 and the Sex Discrimination (Northern Ireland) Order 1976 made by regulations 163 and 133.

religious marriage and so no further provision is needed in relation to blessings of same-sex religious marriage in Northern Ireland.

6. These regulations also provide protections for freedom of thought, conscience and religion in relation to same-sex marriage⁴. Individuals are free to express positive or negative views about the marriage of same-sex couples (see paragraph 28 below).

1.2 Approach in England and Wales

7. In England and Wales, there is no list or register of those able to solemnise marriages according to religious rites, and no provision for authorisation of individual named celebrants. The system of marriage in England and Wales is based on the approval and registration of premises to host marriages. Couples can opt for a religious or civil ceremony. Civil ceremonies take place in a Register Office or on premises approved by the local registration authority (which cannot be religious premises). Religious ceremonies can take place at Anglican churches (opposite-sex marriages only) or any religious building registered as a place of worship and for the solemnisation of marriages. Special arrangements apply to marriages according to the rites of the Jewish and Quaker faiths.
8. The Marriage (Same Sex Couples) Act 2013 (“the 2013 Act”) extends marriage to same-sex couples in England and Wales. The 2013 Act ensures that no religious organisation or its representative can be forced to conduct or participate in same-sex marriage ceremonies. It does so by creating a set of protections often referred to as the ‘quadruple lock’. The quadruple lock:
 - makes clear that a religious marriage ceremony of a same-sex couple will only be possible if:
 - the governing body of the religious organisation has opted in by giving explicit consent to marriages of same-sex couples, and
 - the individual minister is willing to conduct the marriage, and
 - if the ceremony takes place in a place of worship, those premises have been registered for marriages of same-sex couples.
 - explicitly states that no religious organisation can be compelled to opt in to marry same-sex couples or to permit this to happen on their premises; and that no religious organisation or representative can be compelled by any means to conduct or participate in marriage ceremonies for same-sex couples;

⁴ See the Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019.

- amends the Equality Act 2010 to make clear that it is not unlawful discrimination for a religious organisation or individual minister to refuse to marry a same-sex couple;
 - ensures that the common law legal duty on the clergy of the Church of England and the Church in Wales to marry parishioners does not extend to same-sex couples. The legislation also protects the Church of England's Canon law, which says that marriage is the union of one man with one woman, so that it does not conflict with civil law.
9. If a religious organisation chooses not to marry same-sex couples, its representatives are bound by that decision. In that situation, an individual minister or other representative cannot marry a same-sex couple according to the religious rites and marriage procedures of that organisation.
10. If a religious organisation, other than the Church of England or Church in Wales, wishes to marry same-sex couples according to its rites and marriage procedures, it can choose to do so ('opting in'). If the religious organisation opts in, it is still lawful for an individual minister, or a person who acts as an authorised person on behalf of that organisation, to refuse to conduct or participate in the marriage. If the religious organisation has previously opted in, it can subsequently choose to opt out.
11. Special provision is made for the Church of England and the Church in Wales. The Church of England is the established church of England (which gives it a range of legal privileges and responsibilities) and is free to decide for itself whether to amend its own canon law to allow same-sex couples to marry according to its rites. Both the Church of England and the Church in Wales are required to perform opposite-sex weddings for parishioners meeting residence requirements.
12. In England and Wales, any decision to opt in to conducting same-sex marriages must be taken by the relevant governing authority of the religious organisation. This is the body which is recognised as such by the members of that organisation. In some cases, it will be the recognised national body of that organisation. In others, where there is no hierarchical structure, it will be local congregations or groups.

1.3 Approach in Scotland

13. The officiant-based system of marriage in Northern Ireland set out in the 2003 Order (see paragraph 2 above) is based on the model that has operated in Scotland since 1977 with some discrete differences.

14. Religious or belief marriages in Scotland may be carried out only by a minister or deacon of the Church of Scotland (opposite-sex marriages only) or approved celebrants. Approved celebrants are:

- any minister, clergyman, pastor, priest or other celebrant from a prescribed⁵ religious or belief body;
- a member of a religious or belief body which is not prescribed who is registered with the Registrar General for Scotland as empowered to solemnise marriage;
- a member of a religious or belief body temporarily authorised to solemnise marriages.

15. The introduction of same-sex marriage in Scotland was through the Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”). As in England and Wales, a set of protections apply to ensure that religious and belief bodies cannot be obliged to carry out such marriages against their will. These are, however, different to the “quadruple lock”. They reflect various differences in Scottish religious and belief bodies and in the procedures for conducting religious marriages in Scotland, from those in England and Wales.

16. The 2014 Act set up a parallel system for same-sex marriages, allowing religious or belief bodies to apply to be prescribed to conduct same-sex marriages (in which case all of their ministers or other representatives are approved to conduct such marriages), to nominate individual celebrants for registration, or seek temporary authority for individuals to solemnise such marriages.

17. The legislation makes clear that it does not impose any duty on any religious or belief body to request that it be prescribed to conduct same-sex marriages, or to nominate any of its members to be registered or temporarily authorised as celebrants. Similarly, the legislation does not impose any duty to solemnise same-sex marriages on a celebrant authorised to do so, and exceptions in the Equality Act 2010 ensure that a celebrant or a religious or belief body does not unlawfully discriminate by refusing to conduct same-sex marriage. If it has previously opted in, a religious or belief body can subsequently choose to opt out. If it has nominated celebrants, it could choose to de-register them.

18. If a religious or belief body chooses not to marry same-sex couples, its celebrants are bound by that decision and cannot marry a same-sex couple. Celebrants are bound by the religious or belief ethos and doctrines of the particular religious or belief body they belong to and represent.

⁵ “Prescribed” means listed in regulations made by the Scottish Ministers. Religious or belief bodies can be prescribed only if they request this.

19. Religious marriages in Scotland can be held at any location agreed by the marrying couple and the approved celebrant. Further exceptions in the Equality Act 2010 ensure that a religious or belief body, or a person or group of people acting on its behalf, is not unlawfully discriminating if it refuses to allow premises owned or controlled by the religious body to be used to solemnise same-sex marriage.

1.4 Number of religious marriages and religious bodies

20. In England and Wales, religious marriages accounted for 25% of all marriages between opposite-sex couples, and 0.9% between same-sex couples in 2016⁶. In Northern Ireland, religious marriages accounted for over 66% of all opposite-sex marriages in the same year⁷.

21. There are over 80 religious bodies in Northern Ireland that provide officiants to perform religious marriages.

Proposed system to enable same-sex religious marriage in Northern Ireland

1.5 General principles

22. The rules for marriage are different in Scotland compared to England and Wales and so the religious protections in Scotland and England and Wales differ. Marriage in Northern Ireland is different again and so it is not possible simply to import the religious protection regimes from England and Wales or Scotland into regulations for Northern Ireland.

23. In introducing same-sex religious marriage in Northern Ireland we wish to enable those couples that want to have a same-sex religious marriage to have one (provided that the religion or denomination that they wish to conduct their marriage has chosen to conduct such marriages), and those religious bodies that want to conduct same-sex religious marriages to do so. We are mindful of the need to balance the rights of same-sex couples, religious bodies and individual officiants.

24. We are aware that for many religious bodies, marriage is a union which can take place only between two people of the opposite sex, and on that basis those organisations would not wish to participate in the formation of same-sex marriages. That is why existing provisions for same-sex marriage in other parts of the United Kingdom contain specific religious protections ensuring those religious bodies that do not wish to participate in same-sex religious marriage cannot be obliged to do so. We wish to introduce comparable provisions in Northern Ireland that ensure that religious bodies (and those acting on their behalf or under their auspices) are able to choose whether or not to offer same-sex religious marriage, and do not

⁶ 2019. Office for National Statistics, Marriages in England and Wales: 2016.

⁷ 2018. Northern Ireland Statistics Research Agency, Marriages by type 1887-2017

unlawfully discriminate if they refuse to solemnise marriages because of the sex or sexual orientation of the couple.

25. The proposed system set out below for same-sex religious marriage in Northern Ireland has been designed with these principles in mind. This proposed system will not apply to persons appointed under article 31, such as registrars. This is because persons appointed under article 31 are empowered to conduct civil marriages only. The regulations that permit same-sex couples in Northern Ireland to form a civil marriage made under section 8(1) of the NI EF Act do not allow persons appointed under article 31 to refuse to marry same-sex couples, even if they have a religious objection to doing so, mirroring the position in the rest of the UK.

26. When we refer in this document to ‘officiants’ we mean people empowered to solemnise religious marriage in Northern Ireland, whether on a permanent or temporary basis. When we use the term ‘religious body’, we mean an organised group of people meeting regularly for common religious worship⁸.

27. We propose to introduce the following protections for religious bodies in Northern Ireland, which are set out in more detail below:

- officiants will only be able to solemnise same-sex religious marriage if the governing authority of the religious body they belong to has given its written consent to same-sex marriage.
- the legislation will make clear that religious bodies (and individual officiants) cannot be compelled by any means, including by the enforcement of a contract or a statutory or other legal requirement, to perform same-sex marriages or otherwise be involved in same-sex marriages.
- there will be equality law protections so that religious bodies and individual officiants do not unlawfully discriminate if they refuse to solemnise marriages because of the sex or sexual orientation of the couple.

28. Existing Northern Ireland law⁹ makes it an offence to speak or behave in a threatening, abusive or insulting way if this is intended or likely to stir up hatred against or arouse fear of people because of their sexual orientation. The regulations made under section 8(1) of the NI EF Act amend the law to provide that discussion or criticism of same-sex marriage will not of itself be an offence¹⁰. This makes it clear that, as in England, Wales and Scotland, people will remain free to express views, including critical views, about same-sex marriage, so long as this is not done in a threatening, abusive or insulting way and is not intended to stir up hatred or arouse fear.

⁸ See article 2 of the 2003 Order.

⁹ The Public Order (Northern Ireland) Order 1987

¹⁰ See regulation 142 of the Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019

29. We are consulting separately on the issue of conversion from marriage to civil partnership and vice versa [*add link*]. When decisions are made about conversion entitlements, we propose to include appropriate religious protections, similar to those we are proposing for same-sex religious marriage. This is discussed in more detail in the consultation on conversion entitlements.

1.6 Appointing and removing religious officiants

30. We want to enable officiants who wish to solemnise same-sex religious marriage to be able to do so. However, we also want to ensure that officiants who do not wish to do so cannot be compelled to solemnise same-sex religious marriage.

31. In Northern Ireland, officiants can be appointed in two ways:

- by application of the religious body under article 10(1) of the 2003 Order;
- by temporary authorisation granted by the Registrar General to a member of a religious body under article 14(1). This can be granted for one or more specified marriages, or for marriages during a specified period.

32. An officiant must:

- be recognised by the religious body of which he/she is a member;
- be a fit and proper person to solemnise marriages;
- not have been convicted of an offence under the 2003 Order;
- not be solemnising marriages for the purpose of profit or gain.

33. We propose that officiants will be registered with the Registrar General as empowered to conduct:

- a. opposite-sex marriage only,
- b. same-sex marriage only, or
- c. both opposite-sex and same-sex marriage.

34. We propose that an application for registration or temporary authorisation of an officiant to conduct marriages of same-sex couples may be made only with the written consent to same-sex marriage of the “governing authority” of the religious body of which the officiant is a member. This is similar to the system that operates in England and Wales, which also requires the consent of the governing authority. More information about the proposed definition of “governing authority” is given below in paragraphs 39 to 44. This means that the giving or withholding of consent to solemnise marriages of same-sex couples according to religious rites rests with the governing authority of the religious body and not with individual officiants or other ministers/officials.

Question 1: Do you agree that consent of the governing authority should be required before officiants can be appointed to solemnise same-sex religious marriage?	Yes, I agree	No, I do not agree	Not sure
If you have answered no, please explain your reasons.			

35. Officiants who are already registered with, or temporarily authorised by, the Registrar General when the new regulations for same-sex religious marriage come into force will be empowered to solemnise opposite-sex religious marriage only. Any religious body that wishes its officiants to be also empowered to solemnise same-sex marriage will have to make a further application, for which there is no fee, and provide the written consent of the governing authority to same-sex marriage. The application process for officiants to conduct marriages of opposite-sex couples will remain the same as it is now.

36. The Registrar General can cancel the registration of an officiant under article 11 if either that officiant, or the religious body that applied for him/her to be registered, requests the cancellation¹¹. This process for cancellation will also apply to officiants registered as empowered to solemnise same-sex marriage.

37. Where a religious body chooses not to give consent to same-sex marriage, its officiants would be bound by that decision. In that situation, its officiants could not be empowered to solemnise any marriages of same-sex couples according to the religious rites and marriage procedures of that body.

38. We propose that where a religious body chooses to give consent to same-sex marriage, but an individual officiant of that body does not wish to solemnise such marriages, that officiant could not be compelled to do so, and would not unlawfully discriminate by refusing to solemnise same-sex religious marriages.

Question 2: Do you agree that officiants should be free to choose whether to solemnise same-sex marriages, even where their religious body chooses to consent to such marriages?	Yes, I agree	No, I do not agree	Not sure
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¹¹ Article 12 of the 2003 Order

If you have answered no, please explain your reasons.			

1.7 Governing authority of a religious body

39. The idea of a “governing authority” already exists in England and Wales in relation to both marriage and civil partnership. We propose the following general definition of “governing authority” in Northern Ireland: *“the person or persons recognised by the members of the religious body as competent for the purpose of giving consent.”*

40. This is the same definition as is used in England and Wales (see section 26A of the Marriage Act 1949).

41. We appreciate that in Northern Ireland, as in England and Wales, some religious bodies have a clear decision-making structure with an identifiable person or persons that is competent to act and make decisions on behalf of the religious body, while other religious bodies do not have a hierarchical structure and instead operate as local congregations or groups. In either case, the proposed definition of governing authority would mean that whoever makes decisions on behalf of the religious body would be responsible for deciding whether to give consent to marriages of same-sex couples.

Question 3: Do you agree with the proposed general definition of “governing authority”, whose consent is required for religious bodies to solemnise same-sex religious marriages?	Yes, I agree	No, I do not agree	Not sure
<i>Please note the general definition of “governing authority” in Northern Ireland is: ‘the person or persons recognised by the members of the religious body as competent for the purpose of giving consent’.</i>			
If you have answered no, please explain your reasons.			

42. In addition to the above general definition of governing authority, we would like to hear views as to whether we should also set out the identity of some governing authorities in regulations. In England and Wales, some governing authorities responsible for particular Jewish communities are specified in the Marriage Act

1949, and the governing authorities for some religious groups are specified in regulations applicable to civil partnerships¹². For example:

- the General Secretary of the Catholic Bishops' Conference of England and Wales is specified as the governing authority for the Roman Catholic Church;
- the General Synod is specified as the governing authority for the Church of England;
- the General Assembly of the United Reformed Church is specified as the governing authority of the United Reformed Church;
- the Conference of the Methodist Church is specified as the governing authority of the Methodist Church.

43. If this system were adopted in Northern Ireland, where a religious body has an identified person or body competent to give consent, the religious body could ask the Department of Finance to specify this person or body as the governing authority in regulations. This makes clear who *could* give consent for that body, but the governing authority must additionally give consent to same-sex marriage if they wish to do so. This approach is less likely to be appropriate for smaller religious bodies who may not have an identifiable governing authority that could be specified in regulations, but these smaller bodies could rely on the general definition given above.

44. Adopting this system in Northern Ireland would, therefore mean that the “governing authority” in Northern Ireland would be:

- the person or body specified in regulations as being competent to give consent for these purposes, or;
- where no person is specified in regulations in respect of a religious body, the person or persons recognised by the members of that body as competent for the purpose of giving consent

Question 4: Do you agree that the definition of governing authority should also include a person or body (such as a recognised decision-making body) that, on request, is specified in regulations?	Yes, I agree	No, I do not agree	Not sure

¹² See regulation 2D of and Schedule A1 to the Marriages and Civil Partnerships (Approved Premises) Regulations 2005.

If you have answered no, please explain your reasons.

1.8 Religious bodies and individuals should not be compelled to participate in same-sex marriage

45. England and Wales and Scotland take different approaches to protecting religious bodies and officiants from being obliged to carry out same-sex marriages.

46. In England and Wales, a person cannot be compelled by any means (including by the enforcement of a contract or a statutory or other legal requirement) to undertake specified activities in relation to same-sex marriage. This means that a religious organisation that has 'opted in' cannot compel its own ministers to solemnise same-sex religious marriage.

47. In Scotland, the legislation provides that nothing in the provisions enabling religious or belief celebrants to be authorised to solemnise same-sex marriage imposes a duty on any religious or belief body or person to do so. This means that the religious or belief body or celebrant could in theory be compelled to solemnise same-sex marriage as a result of some other obligation, such as other legislation or an employment contract (although in practice this may be unlikely to occur). One effect of this is that, in contrast to the position in England and Wales, a religious or belief body in Scotland that has 'opted in' can compel its own celebrants to solemnise same-sex religious marriage (we have asked about this for Northern Ireland in question 2).

48. For Northern Ireland, we propose to follow the England and Wales approach and include a specific provision in legislation to ensure that religious bodies and persons acting on behalf or under the auspices of a religious body cannot be compelled by any means (including by the enforcement of a contract or a statutory or other legal requirement) to undertake specified activities relating to same-sex marriage.

Question 5: Do you agree that no religious bodies or persons acting on behalf or under the auspices of such bodies should be compelled to undertake specified activities relating to same-sex marriage?	Yes, I agree	No, I do not agree	Not sure

If you have answered no, please explain your reasons.

49. We propose to specify the core functions that might be undertaken by religious bodies (including persons acting on their behalf and under their auspices) and officiants as follows:

- It will not be possible to compel **religious bodies** (or persons acting on their behalf or under their auspices) to:
 - apply to the Registrar General for a member to be registered as empowered to solemnise same-sex marriages in Northern Ireland;
 - give consent to same-sex marriage; or
 - provide, arrange, facilitate or participate in, or be present at the solemnisation of a same-sex marriage, or a ceremony or event to mark the formation of a marriage where the reason for the body or person not doing that thing is because the marriage is a marriage of a same-sex couple.

- It will not be possible to compel **any person** to:
 - be registered by the Registrar General as empowered to solemnise same-sex religious marriages;
 - apply for a temporary authorisation to solemnise one or more same-sex religious marriages.

- It will not be possible to compel **an officiant** to solemnise marriages of same-sex couples, where the reason for the officiant not wishing to solemnise the marriage is because it is a marriage of a same-sex couple.

50. The 'non-compulsion' provision **will not** apply to service providers that are not religious bodies, such as hoteliers, wedding photographers and florists. This is in line with wider equality law in Northern Ireland and the rest of the United Kingdom, which requires that service providers do not discriminate on grounds of sex or sexual orientation.

Question 6: Do you agree that religious bodies (including persons acting on their behalf and under their auspices) and officiants should not be compelled to undertake the core functions specified in paragraph 49?	Yes, I agree	No, I do not agree	Not sure

If you have answered no, please explain your reasons.

1.9 Equality law protections

51. In England and Wales and Scotland a single Act (the Equality Act 2010) prohibits discrimination because of nine protected characteristics, but in Northern Ireland separate legislation deals with discrimination on different grounds. There are exceptions relevant to marriage and civil partnership in the Equality Act 2010.

52. In Northern Ireland, the Fair Employment and Treatment Order 1998 prohibits discrimination in the provision of public services on grounds of religion or belief or political opinion. We do not propose to add new exceptions to this Order because we do not consider that refusing to perform a same-sex marriage, even if motivated by the religious belief of the person refusing, would amount to discrimination on grounds of religion or belief. In this situation, the refusal to perform the marriage is not because of the couple's religion or belief, but because of their sexual orientation or sex.

53. We propose to add new exceptions to the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 and the Sex Discrimination (Northern Ireland) Order 1976. These are the enactments that prohibit discrimination on grounds of sex and sexual orientation in the provision of services to the public in Northern Ireland. Unless we add these new exceptions, where a person refuses to conduct a same-sex marriage because of a religious (or other) objection to marriages of same-sex couples, this would be potentially discriminatory on grounds of sexual orientation. It is also possible that such behaviour could amount to unlawful sex discrimination: if an officiant refuses to marry a man in a relationship with a man, this could amount to less favourable treatment on grounds of sex if the officiant would be prepared to marry a woman in a relationship with a man.

54. The new exceptions relating to discrimination on grounds of sexual orientation and sex will be very similar to each other, and to the provisions applicable in Scotland, which has a similar system for the appointment of celebrants (rather than the premises-based system that operates in England and Wales).

55. The effect of the new exceptions would be that, when providing a service to the public:

- an officiant does not unlawfully discriminate by refusing to solemnise a same-sex marriage.

- a religious body does not unlawfully discriminate by allowing one of its officiants to refuse to solemnise a same-sex marriage.
- a religious body does not unlawfully discriminate by refusing to allow premises owned or controlled by that body to be used to solemnise a same-sex marriage.
- a person (or a group of persons) does not unlawfully discriminate by refusing to allow premises owned or controlled by the person (or the group) on behalf of a religious body to be used to solemnise a same-sex marriage.

56. In all these cases, the exceptions will only apply where the reason for the refusal is that the marriage is between two persons of the same sex.

57. As with the 'non-compulsion' provisions, described in section 1.8, these exceptions will only apply to officiants, religious bodies and persons acting on their behalf or under their auspices. This means that the exceptions will not apply to other service providers, including hotels, florists and wedding photographers. .

58. The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 already contain an exception in article 16 which permits religious bodies to act in ways that would otherwise be unlawful discrimination, but only where the organisation can show that this is either: necessary to comply with the doctrine of the organisation; or to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers. We are not proposing to apply these conditions (the 'conflict/compliance' conditions) to the new exceptions, because such conditions do not apply to the similar exceptions applicable in England and Wales and Scotland.

59. As mentioned in paragraph 5, we have already added exceptions to the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 and the Sex Discrimination (Northern Ireland) Order 1976 in the regulations made under section 8(1) of the NI EF Act. These make provision so that a religious body, or a person acting on behalf of or under the auspices of a religious body, does not unlawfully discriminate on grounds of sex or sexual orientation where the religion or person:

- (a) does not provide, arrange, facilitate or participate in; or
- (b) is not present at a ceremony or event to mark the solemnisation of the marriage or the formation of the civil partnership.

60. These exceptions will cover ceremonies held at the time the marriage is solemnised as well as 'blessings' and other ceremonies provided after the marriage or civil partnership is formed.

Question 7: Do you agree that the existing protections plus the exceptions we are proposing to the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 and the Sex Discrimination (Northern Ireland) Order 1976 cover the services a religious body or person acting on its behalf might provide to the public in connection with same-sex marriage?	Yes, I Agree	No, I do not agree	Not sure
If you have answered no, please explain your reasons.			

1.10 Ministers/chaplains in secular organisations

61. Some ministers and chaplains work in non-religious settings such as hospitals, prisons, the armed forces, higher and further education institutions and schools. Exceptions in the Equality Act 2010 ensure that such ministers in England, Wales and Scotland who do not solemnise same-sex religious marriages are not acting unlawfully.

62. We consider that the protections set out in sections 1.6, 1.7, 1.8 and 1.9 relating to consent, non-compulsion and equality law exceptions, would apply equally to ministers/chaplains working in a non-religious setting, to ensure that they have the same rights to choose whether or not to solemnise same-sex marriages.

Question 8: Do you agree that the proposed protections (set out in sections 1.6, 1.7, 1.8 and 1.9) relating to consent, non-compulsion and equality law exceptions are appropriate for ministers/chaplains working in secular organisations?	Yes, I agree	No, I do not agree	Not sure
If you have answered no, please explain your reasons.			

63. Equality legislation in Northern Ireland (as in England and Wales and Scotland) includes provision that deems an employer or principal to be liable for discrimination caused by its employee or agent. This would mean that a secular employer (such as a university or hospital), could potentially be deemed liable for discrimination if an employee (such as a chaplain) refuses to solemnise same-sex marriages. The chaplain would not be acting unlawfully because of the equality exceptions set out above. But the secular employer would not be able to rely on

those exceptions, because it is not an officiant, a religious body, or a person acting on behalf of such a body.

64. In this situation, we propose that the employer would not be deemed to have acted unlawfully solely because of the employee’s conduct. But where the employer has itself acted in a discriminatory way, the employer would still be liable. This might be the case, for example, where a hospital refused to allow an alternative officiant, willing and authorised to conduct same-sex marriages, to do so.

65. This is the approach we took in relation to blessings, in the amendments to the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006¹³ and the Sex Discrimination (Northern Ireland) Order 1976.

Question 9: Given what has been covered in Part 1 of this consultation:	Yes	No	Not sure
<p style="text-align: center;">If you represent a religious body in Northern Ireland, would you choose to give consent to solemnise same-sex marriages?</p> <p>Name of religious body: _____</p>			

¹³ Regulations 133 and 163 of the Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019.

PART TWO - DEMOGRAPHIC QUESTIONS

Question 10: Are you responding as an individual or are you representing the views of an organisation?	Individual	On behalf of an organisation
If an organisation, what is the name of the organisation you are responding on behalf of?		
Who does the organisation represent?		
What is the approximate size of the organisation?		
How were the views of members sought? (if known)		

Question 11: As per the introductory text, we are required to publish organisational responses in full. Are you happy for us to publish your organisation's response to this consultation in full?	Yes, I agree	No, I do not agree
If no, please explain why not, referring to specific sections where relevant (please note, this does not guarantee that we won't publish your response.)		

Question 12: what region are you from?	Please put a cross next to the region that applies
<p>Northern Ireland</p> <p>Scotland</p> <p>England</p> <p>Wales</p> <p>Republic of Ireland</p> <p>Other</p>	

Question 13: How old are you?	Please put a cross next to the age range that applies
<p>0-15</p> <p>16-24</p> <p>25-34</p> <p>35-44</p> <p>45-54</p> <p>55-64</p> <p>65-74</p> <p>75-84</p>	

85+	
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Question 14: What is your sex?	Please put a cross next to the sex that applies
Female Male	

Question 15: Is your gender identity the same as the sex you were registered at birth?	Please put a cross next to the answer that applies
Yes No (please write in your gender if you wish)	

Question 16: Sexual orientation. This question is about your sexual orientation. Do you identify as:	Yes	No
Heterosexual or straight		
Gay or Lesbian		
Bisexual		

Other		
Prefer not to say		

Question 17: What is your relationship status?	Yes	No	Prefer not to say
Single- that is, never married and never in a civil partnership			
Married			
In a civil partnership			
Separated, but still legally married or in a civil partnership			
Divorced or civil partnership dissolved			
Widowed			

Question 18: What is your religion?	Please put a cross next to the religion that applies
<p>No religion</p> <p>Catholic</p> <p>Presbyterian</p> <p>Church of Ireland</p> <p>Methodist</p> <p>Baptist</p> <p>Free Presbyterian</p> <p>Brethren</p> <p>Protestant – Other, including not specified</p> <p>Christian – Other, including not specified</p> <p>Buddhist</p> <p>Hindu</p> <p>Jewish</p> <p>Muslim</p> <p>Sikh</p> <p>Any other religion</p>	

Question 19: What is your ethnicity?	Please put a cross next to the option that best describes your ethnic group or background.
<p>White</p> <p>Irish Traveller</p> <p>White and Black Caribbean</p> <p>White and Black African</p> <p>White and Asian</p> <p>Any other Mixed / Multiple ethnic background</p> <p>Indian</p> <p>Pakistani</p> <p>Bangladeshi</p> <p>Chinese</p> <p>Any other Asian background</p> <p>African</p> <p>Caribbean</p> <p>Any other Black / African / Caribbean background</p> <p>Arab</p> <p>Any other ethnic group</p>	

Question 20: Do you have any dependent children (aged under 16 years, or aged	Yes	No	Prefer not to say
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between 16-18 years in full-time education or training) living with you?			
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PART THREE - SUPPLEMENTARY INFORMATION

Annex A: Section 8 of the Northern Ireland (Executive Formation etc) Act 2019

(1) The Secretary of State must, by regulations, make provision so that—

- (a) two persons who are of the same sex are eligible to marry in Northern Ireland, and
- (b) two persons who are not of the same sex are eligible to form a civil partnership in Northern Ireland,

provided that, apart from the question of sex, they would be eligible to marry or form a civil partnership (as the case may be).

(2) Regulations under subsection (1) must be made so as to come into force on or before 13 January 2020 (but this does not in any way limit the re-exercise of the power).

(3) The Secretary of State may, by regulations, make any other provision that appears to the Secretary of State to be appropriate in view of—

- (a) the extension of eligibility to marry in Northern Ireland to persons of the same sex, and
- (b) the extension of eligibility to form civil partnerships in Northern Ireland to persons who are not of the same sex.

(4) Regulations under subsection (3) may, in particular, make provision about—

- (a) parenthood and parental responsibility of parties to a marriage or civil partnership;
- (b) the application by a party to a marriage or civil partnership for a gender recognition certificate under the Gender Recognition Act 2004, or the issuing of such a certificate, and the consequences of that application or issuing for the marriage or civil partnership;
- (c) the financial consequences of marriage or civil partnership (for example, in relation to pensions or social security);
- (d) the treatment under the law of Northern Ireland of marriages, civil partnerships or relationships similar to civil partnerships formed outside of Northern Ireland.

(5) The Secretary of State may, by regulations, make provision for and in connection with a right to—

- (a) convert a marriage into a civil partnership;
- (b) convert a civil partnership into a marriage.

Such regulations may, in particular, make provision equivalent or similar to that contained in or authorised by section 9 of the Marriage (Same Sex Couples) Act 2013.

(6) The Secretary of State may, by regulations, make any provision that the Secretary of State considers appropriate in order to protect the ability to act in accordance with religious or other belief or opinion in relation to marriage or civil partnership (including the conversion of marriage into civil partnership and vice versa).

(7) Regulations under this section—

- (a) may make provision for fees to be payable;
- (b) may make provision conferring a discretion on a person;
- (c) may make provision enabling a person to make regulations (and such regulations may make provision for fees to be payable);
- (d) may include provision amending, repealing or revoking any provision made by an Act of Parliament or Northern Ireland legislation;
- (e) may, in so far as made in reliance on section 11 (2) , include provision amending or repealing provision made by an Act or Measure of the National Assembly for Wales or an Act of the Scottish Parliament.

(8) In this section—

- (a) references to marriage in Northern Ireland (however expressed) include references to marriage outside of the United Kingdom by virtue of eligibility to marry in Northern Ireland (in accordance with Part 1 or Part 3 of Schedule 6 to the Marriage (Same Sex Couples) Act 2013);
- (b) references to forming a civil partnership in Northern Ireland include references to registering as civil partners outside the United Kingdom by virtue of eligibility to do so in Northern Ireland (in accordance with section 210(2)(b) or 211(2)(b) of the Civil Partnership Act 2004).

Annex B: Consultation questions

Question 1: Do you agree that consent of the governing authority should be required before officiants can be appointed to solemnise same-sex religious marriage?	Yes, I agree	No, I do not agree	Not sure
If you have answered no, please explain your reasons.			

Question 2: Do you agree that officiants should be free to choose whether to solemnise same-sex marriages, even where their religious body chooses to consent to such marriages?	Yes, I agree	No, I do not agree	Not sure
If you have answered no, please explain your reasons.			

Question 3: Do you agree with the proposed general definition of “governing authority”, whose consent is required for religious bodies to solemnise same-sex religious marriages?	Yes, I agree	No, I do not agree	Not sure
	<i>Please note the general definition of “governing authority” in Northern Ireland is: ‘the person or persons recognised by the members of the religious body as competent for the purpose of giving consent’.</i>		
If you have answered no, please explain your reasons.			

Question 4: Do you agree that the definition of governing authority should also include a person or body (such as a recognised decision making body) that, on request, is specified in regulations by the Registrar General?	Yes, I agree	No, I do not agree	Not sure

If you have answered no, please explain your reasons.

Question 5: Do you agree that no religious bodies or persons acting on behalf or under the auspices of such bodies should be compelled to undertake specified activities relating to same-sex marriage?	Yes, I agree	No, I do not agree	Not sure

If you have answered no, please explain your reasons.

Question 6: Do you agree that religious bodies (including persons acting on their behalf and under their auspices) and officiants should not be compelled to undertake the core functions specified in paragraph 49?	Yes, I agree	No, I do not agree	Not sure

If you have answered no, please explain your reasons.

Question 7: Do you agree that the existing protections plus the exceptions we are proposing to the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 and the Sex Discrimination (Northern Ireland) Order 1976 cover the services a religious body or person acting on its behalf might provide to the public in connection with same-sex marriage?	Yes, I agree	No, I do not agree	Not sure

If you have answered no, please explain your reasons.

Question 8: Do you agree that the proposed protections (set out in sections 1.6, 1.7, 1.8 and 1.9) relating to consent, non-compulsion and equality law exceptions are appropriate for ministers/chaplains working in secular organisations?

Yes, I agree	No, I do not agree	Not sure
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If you have answered no, please explain your reasons.

Question 9:

Given what has been covered in Part 1 of this consultation:

If you represent a religious body in Northern Ireland, would you choose to give consent to solemnise same-sex marriages?

Name of religious body: _____

Yes	No	Not sure
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