

Same-sex religious marriage in Northern Ireland Government consultation

Response by Traditional Unionist Voice – TUV

We begin by noting the belated nature of a consultation on protections given that the consultation closes after same sex marriages become legal in Northern Ireland. Protection for churches was an afterthought once same-sex marriage had been imposed.

Much of the actual content of the consultation is fine in so far as it goes. As we say later on, in response to the pro forma questions, we would answer in the affirmative to each one. However, the fact that we take no issue with the questions the NIO actually asks merely underscores the complete disinterest on the part of the NIO in the wide-ranging implications of these changes for a raft of people completely ignored by the consultation.

We would highlight the following issues:

Registrars

Paragraph 25 explicitly states that the protections afforded to churches and ministers of religion will **not** apply to registrars. There is no space for anyone to express an opinion on this in the response form.

It is worth noting that while the NIO is disinterested, this issue has provoked debate and legislation in other parts of the world.

In Prince Edward Island in Canada there is an absolute right to be exempt from performing any marriage on religious grounds. Section 11.1 of the Marriage Act states: *Refusal to solemnize*

... a person who is authorized to solemnize a marriage under this Act may refuse to solemnize a marriage that is not in accordance with that person's religious beliefs.

In South Africa section 6 of the Civil Union Act states that:

A marriage officer ... may in writing inform the Minister that he or she objects on the ground of conscience, religion and belief to solemnising a civil marriage between persons of the same sex. Whereupon that marriage officer shall not be compelled to solemnise such civil union.

Why does the NIO choose to ignore this serious issue which impacts on the civil, religious, human and employment rights of registrars? Here we have a situation where people have taken up the position of registrars under one set of conditions and now those conditions have been radically changed. If, as is often claimed, same sex marriage was really about rights then this issue would have been addressed. As it stands the NIO have even excluded a question on the matter from the pro forma form for responding to the consultation.

Service providers

In paragraph 50 of the consultation it is stated that:

“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.”

Similarly paragraph 52 reads:

“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.”

And paragraph 57 states:

“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.”

Again it is remarkable that the consultation would seek to gloss over this issue, particularly following the *Lee v Ashers Baking Co Ltd.* judgement. The Supreme Court held that:

“Considering the issues identified in the first reference, that the defendants had refused to fulfil the order because of their religious objection to same-sex marriage not because they perceived the plaintiff to be homosexual or because he associated with homosexuals; that they would have refused the same order if it had been placed by a heterosexual person because their objection had been to the message not the person placing the order; that the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 did not impose civil liability for the refusal to express a political opinion or express a view on a matter of public policy contrary to the religious belief of the person refusing to express that view; and that, accordingly, there had been no discrimination against the plaintiff on grounds of sexual orientation.”

Yet now the NIO proposes to change the law so as to strip people like the MacArthur family of legal protection should they refuse to provide services for a same sex marriage.

This is intolerable and wrong.

Equality Screening Form

It is also worth noting some points about the Equality Screening Form published in conjunction with this consultation paper. None of these proposals were subjected to an Equality Impact Assessment.

Under Main Stakeholders Affected there is **no mention of service providers** such as hotels, florists and wedding photographers – in spite of the impact of the legislative

change on service providers being mentioned in the consultation document. This is further evidence of the NIO's disregard for people of faith.

Under In Favour of None Impact the NIO state:

- "1. The policy has no relevance to equality of opportunity or good relations.
- "2. The policy is purely technical in nature and will have no bearing in terms of its likely impact on equality of opportunity or good relations for people within the equality and good relations categories."

Furthermore the document goes on to state that there is no impact in terms of people holding different political opinion.

This is spite of the fact that document concedes on pages 15-16 that just 37.5% of Unionists support same sex marriage.

The bias and groupthink of those who compiled the consultation is underscored by the comments made in relation to religious belief. It is claimed that the policy has no negative impact and merely "remove an existing inequality by enabling some same-sex couples to have a religious same sex marriage (if their religious body chooses to solemnise such marriages)."

No thought is given to the impact on the rights of those registrars and service providers who object to same-sex marriage who now face the prospect of being forced out of their job or driven out of business by zealots as has happened other Christian business holders in other parts of the world after the introduction of same-sex marriage.

NIO Questions

Finally TUV would make the following comments in response to the questions asked by the NIO in the consultation. We support the church exemption proposals, as far as they go, but nonetheless don't support the change in the law which made them necessary.

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

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

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?

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’.

Yes

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

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

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

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

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