EXPLANATORY MEMORANDUM TO

THE MARRIAGE AND CIVIL PARTNERSHIP (NORTHERN IRELAND) (NO. 2) REGULATIONS 2020

2020 No. 1143

1. Introduction

1.1 This explanatory memorandum has been prepared by the Northern Ireland Office and the Government Equalities Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to allow same-sex couples to convert a civil partnership to a marriage, and opposite-sex couples to convert a marriage to a civil partnership, in Northern Ireland. There is also provision for conversions outside of the United Kingdom, with arrangements for consular and armed forces conversions under Northern Ireland Law. It also provides protections for religious bodies from being compelled to be involved with conversions or with events or ceremonies to mark conversions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Northern Ireland only, except as follows. Regulation 4(5), regulation 31, except paragraph (1), and regulation 44(2) extend to Northern Ireland, and England and Wales. Regulations 33 and 44(1) and (3), 45 and 46 extend to Northern Ireland, England and Wales, and Scotland. Regulations 32, 36, 38(2) and 44(4) extend to England and Wales only. Regulations 38(1) and (3) to (5) and 47 extend to England and Wales, and Scotland, only.

4.2 The territorial application of this instrument is the same as the territorial extent.

5. European Convention on Human Rights

5.1 The Minister of State for Northern Ireland, Robin Walker MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Marriage and Civil Partnership (Northern Ireland) (No.2) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The Marriage (Same Sex Couples) Act 2013 (c.30) made it possible for same-sex couples to marry in England and Wales, and the Marriage and Civil Partnership (Scotland) Act 2014 (c.5) made similar changes for Scotland.

6.2 The Civil Partnership Act 2004 (c.33) introduced civil partnerships for same-sex couples across the United Kingdom. The Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 (S.I 2014/3181) introduced conversion rights in England and Wales for same-sex couples to convert a civil partnership to a marriage. The Marriage and Civil Partnership (Scotland) Act 2014 (c.5) introduced similar rights for couples in Scotland.

6.3 The Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 (c.12) and the Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458) extended civil partnerships to opposite-sex couples in England and Wales. The Civil Partnership (Scotland) Act 2020 (c.15) will introduce opposite-sex civil partnership and relevant conversion rights in Scotland.

6.4 Section 8 of the Northern Ireland (Executive Formation etc) Act 2019 (c.22) ("NIEFA") imposed a duty on the Secretary of State to make regulations to enable same-sex marriage and opposite-sex civil partnerships in Northern Ireland by 13 January 2020. That duty came into force on 22 October 2019 in the absence of a restored Northern Ireland Executive by 21 October 2019. The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514) ("the 2019 Regulations"), which came into force on 13 January 2020, allowed same-sex couples in Northern Ireland and under Northern Ireland law to form a civil marriage and opposite-sex couples to register a civil partnership. The Marriage and Civil Partnership (Northern Ireland) Regulations 2020 (S.I. 2020/742), which came into force on 1 September 2020, allowed couples in Northern Ireland and under Northern Ireland law to form a religious marriage solemnised by an officiant registered for such marriages. They also provide protections for individual officiants and religious bodies that do not wish to solemnise marriages between two people of the same sex.

6.5 The UK government committed to introducing further regulations under NIEFA enabling conversion between civil partnership and marriage (or vice versa), later in 2020, following a consultation exercise. This staggered approach to implementation was announced to Parliament on 21 October 2019.

7. Policy background

What is being done and why?

7.1 This instrument applies to marriage policy and civil partnership policy, which are transferred matters for Northern Ireland under the Northern Ireland Act 1998 (c.47). While the Northern Ireland Executive and Assembly were restored in January 2020, the UK government committed to delivering remaining policy obligations under section 8 of the Northern Ireland (Executive Formation) Act 2019: same-sex marriage and conversion rights.

7.2 The UK government's approach to implementing same-sex marriage, opposite-sex civil partnerships, and related conversion rights was set out by the then Secretary of

State for Northern Ireland, Julian Smith MP, in a statement to Parliament on 21 October 2019 in which he said:

"On same-sex marriage and opposite-sex civil partnerships, regulations are to be made no later than 13 January 2020. 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 before we introduce religious same-sex marriage in Northern Ireland.[1]"

7.3 The *Marriage and Civil Partnership - Conversion entitlements in Northern Ireland*[2] consultation was published on 20 January 2020 (shortly after restoration of the devolved institutions in Northern Ireland) and closed on 23 February 2020. It sought views on the UK government's proposals for implementing conversion rights in Northern Ireland.

7.4 This instrument gives effect to the policy proposals set out in the consultation.

7.5 Part 2 defines the effect of conversion so that a marriage converted from a civil partnership is to be treated as having subsisted since the date the civil partnership was formed, and a civil partnership converted from a marriage is to be treated as having subsisted since the date the marriage was solemnised even where the marriage was solemnised before the 5 December 2005 when the Civil Partnership Act 2004 came into force.

7.6 Part 3 of the instrument enables conversions to take place in Northern Ireland. Regulation 7 offers a choice of procedures. Regulation 7(3)(b) ensures that the basic conversion fee is not payable for conversions taking place during the first year of the 3-year period. Regulation 10(6) and (7) identify the point in time at which a conversion under Part 3 occurs. There are options for a conversion of a civil partnership into a marriage to take place before a religious officiant, and regulation 16 gives protections to religious bodies from being compelled to be involved with conversions or with events or ceremonies to mark conversions.

7.7 Part 4 of the instrument enables conversion of a marriage into a civil partnership to take place outside the United Kingdom before a British consular official where at least one party is a UK national.

7.8 Part 5 of the instrument enables conversion of a marriage into a civil partnership to take place outside the United Kingdom before a person authorised by a commanding officer of armed forces serving abroad where at least one of the parties is a serving member of the armed forces, or is eligible as a civilian employed in certain functions in support of the armed forces, or is a child of and living with a serving member or eligible civilian employee.

7.9 Part 6 of the instrument enables conversion of a civil partnership into a marriage to take place outside the United Kingdom in cases corresponding to those covered by Parts 4 and 5 of these Regulations. Part 6 does this by extending and amending Parts 3

[1] https://hansard.parliament.uk/Commons/2019-10-21/debates/6BBF6C7A-CA81-4E86-9711-AC031A056424/NorthernIrelandRestoringDevolution?highlight=same%20sex%20marriage#contribution-EFABDEB9-93CD-4C76-A058-7D7CEDDE0F4E

[2] https://www.gov.uk/government/consultations/a-consultation-on-same-sex-religious-marriage-and-conversion-entitlements-in-northern-ireland

and 4 of the Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014, which currently enable conversions abroad only of civil partnerships formed under the law of England and Wales.

7.10 Part 7 of the instrument amends a raft of legislation to ensure, as far as possible, that conversion between civil partnership and marriage (or vice versa) results in no detriment to the couple with respect to the rights and entitlements a couple has enjoyed up to the time of their conversion, and that those entitlements are continuous or see no break or change as the result of conversion. In most cases, where the original relationship offers more favourable entitlements, those have been retained.

7.11 As a result, consequential amendments have been made as follows. Regulation 32 amends the Wills Act 1837 in connection with wills. Regulation 33 amends the Services Departments Registers Order 1959, in connection with armed forces conversions. Regulation 34 amends the Legitimacy Act (Northern Ireland) 1961, in connection with void marriages. Regulation 35 amends the Social Security Pensions (Northern Ireland) Order 1975. Regulation 36 amends the Social Security Pensions Act 1975. Regulation 37 amends the Matrimonial Causes (Northern Ireland) Order 1978, in connection with void and voidable marriages that result from conversion. Regulation 38 amends the Social Security Contributions and Benefits Act 1992. Regulation 39 amends the Social Security Contributions and Benefits (Northern Ireland) Act 1992. Regulation 40 amends the Pension Schemes (Northern Ireland) Act 1993. Regulation 41 amends the Wills and Administration Proceedings (Northern Ireland) Order 1994, in relation to the effect on wills by conversion. Regulation 42 amends the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, and relates to the changes in the law of Northern Ireland enabling religious marriage for same-sex couples that were made by the Marriage and Civil Partnership (Northern Ireland) Regulations 2020. Regulation 43 amends the Gender Recognition Act 2004. Regulation 44 makes several amendments to the Civil Partnership Act 2004. Regulation 45 amends the Income Tax Act 2007, concerning tax reductions for married couples and civil partners where one person was born before 6th April 1935. Regulation 46 amends the Consular Fees Order 2012. Regulation 47 amends the Pensions Act 2014. Regulation 48 amends the Pensions Act (Northern Ireland) 2015.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There is no consolidation done by this instrument.

10. Consultation outcome

10.1 The drafting of this instrument has been informed by the consultation published on 20 January 2020. The consultation was aimed in particular at:

- Same-sex couples who wish to convert an existing civil partnership to marriage;
- Opposite-sex couples who may wish to convert their marriage to a civil partnership;

- LGBT organisations who may have views on conversion rights for same-sex couples.

10.2 The consultation, which closed on 23 February 2020, received 2,284 responses: 2,202 from individuals and 82 from organisations. A large proportion of individuals who responded disagreed with our proposals on the basis that they oppose same-sex marriage. Our response to the consultation sets out our policy for conversion rights for same-sex and opposite sex couples and where the policy has changed, specifically that we will not limit conversions to those that convert a relationship registered or solemnised before these Regulations come into force. The government response to the consultation has been published to coincide with the laying of this instrument and can be viewed alongside the consultation document[3].

11. Guidance

11.1 The General Register Office for Northern Ireland (GRONI) will issue guidance on any changes regarding marriage and civil partnerships to the local registration services and advise the NIDirect website editorial team around the time of implementation.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment for the 2019 Regulations was published alongside the Explanatory Memorandum for that instrument on the legislation.gov.uk website.

12.4 This legislation aims to ensure that all people can access their choice of relationship. This means that couples in Northern Ireland in same-sex civil partnerships can convert their relationship to a same-sex marriage, and couples in Northern Ireland in opposite-sex marriages can convert their relationship to an opposite-sex civil partnership.

12.5 This legislation will have a minimal impact: we expect take-up of conversions to be low, the legislation will only be in place for three years, and there will be no direct impact on businesses.

12.6 Additionally, the legislation is deemed to be non-controversial or politically sensitive. Same-sex marriage and opposite-sex civil partnerships have already been introduced in Northern Ireland in line with the belief that couples should be able to access the form of relationship that best suits them. This new legislation makes the law consistent, giving couples in already formalised relationships the chance to choose and obtain their preferred form of relationship where they were historically unable to do so.

12.7 The legislation will come to an end after three years at which point couples will have had sufficient opportunity to access their preferred choice of relationship and new couples will formalise their relationship using their preferred option.

[3] https://www.gov.uk/government/consultations/a-consultation-on-same-sex-religious-marriage-and-conversion-entitlements-in-northern-ireland

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses (in terms of regulatory burdens).

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Northern Ireland Office and the Government Equalities Office will keep it under review, and the General Register Office for Northern Ireland is responsible for maintaining records relating to conversion.

14.2 A statutory review clause is not included in this instrument as the Secretary of State does not consider it appropriate, since there is not expected to be a significant annualised net impact on business (greater than +/-£5 million net annualised), and there is no requirement for review as the regulations will be in force for 3 years only.

15. Contact

15.1 Raphaela Thynne at the Northern Ireland Office email: raphaela.thynne@nio.gov.uk can be contacted with any queries regarding the instrument.

15.2 Holly Clark, Deputy Director for Constitution, Rights and Healthcare Policy Group at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robin Walker MP, Minister of State at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.