Dear Harriet,

Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill

1. Thank you for your letter of 24 August regarding the Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill.

2. You have raised a number of important points in your letter and I have attempted to answer them below.

Registration of marriages and civil partnerships

3. You raised the point that Clause 1 of the Bill seems to make special provision for Church of England (CofE) and Church in Wales (CinW) marriages (as compared to any other religion or denomination) and queried how the Government seeks to justify this difference in treatment.

4. Clause 1 of the Bill, as amended at Commons Committee, contains two provisions that make different provision for CofE and CinW marriages:

   a. Clause 1(2)(b) enables the Secretary of State to create regulations that provide that marriages solemnised by the CofE/CinW clergy and authorised by ecclesiastical preliminaries are to be registered by a “marriage document”, as opposed to the “marriage schedule” used for other marriages; and

   b. Clause 1(4)(f) enables the Registrar General (RG) to make regulations that make provision in relation to the keeping in a church/chapel of records of marriages solemnized according to the rites of the CofE or the CinW.
5. As I understand it, your query concerns how these provisions are deemed to be compatible with Article 14 of the ECHR as they ostensibly confer differential treatment for CofE and CinW marriages as compared to other marriages. The Government is satisfied that these provisions are compatible with Article 14 ECHR because:

a. Article 14 is not engaged by the measures envisaged under Clause 1(2)(b) (the marriage document provision) as (i) the measures do not reasonably fall within the ambit of any other Convention right other than Article 8; and (ii) there is no relevant difference in treatment between CofE/CinW cohorts and others as regards Article 8 rights since substantially the same data is recorded for both cohorts. Furthermore, even if Article 14 were deemed to be engaged the difference can be justified by the need to make limited reforms to the marriage registration system that minimise interference with the existing ecclesiastical preliminaries regime.

b. Whilst the measures intended to be implemented under Clause 1(4)(f) (the church record keeping provision) may engage Article 14 when read with Article 8, the resulting difference in treatment is justified by the need to prevent marriage fraud, ensure that marriages are recorded in accordance with applicable time limits and ensure that parish records are retained for historical purposes.

6. I have set out a detailed explanation of these points in Annex 1 (Registration of marriages and civil partnerships).

Reform of civil partnerships

7. I would like to assure you that the Government recognises the significance of the Supreme Court judgment in the Steinfeld case and the sensitive issues that it raised, and I am sure that you are aware that the Prime Minister has now announced that we will extend civil partnerships to opposite-sex couples.

8. You have asked whether there is a risk that the result of the current consultation and reporting requirements in Clause 2 of the Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill could be to create significant delays to the ability of Government to address the declaration of incompatibility made in the Steinfeld case. However, while we want to take forward the extension of civil partnerships as quickly as possible, adaptation of civil partnerships for use by opposite-sex couples is not necessarily straightforward in every respect and we would envisage that a further consultation will be needed.

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9. The change will not merely be a matter of altering the eligibility requirements for a civil partnership. We will also need to consider the significant volume of existing legislation dealing with the rights and obligations which flow from status as a civil partner, for example provisions relating to pension or death benefit entitlements. Decisions will also need to be taken about a range of matters, such as the grounds for dissolution of an opposite-sex civil partnership, and the interplay between the status of civil partnerships in England & Wales and the law of other parts of the UK.

10. We therefore believe that the public consultation that is currently required by Clause 2 of the Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill could be utilised to ensure all the issues have been identified and resolved. For that reason, we do not believe that the existing requirements create a risk of unnecessary delay.

11. Sufficient time is needed to develop the policy proposals, complete the consultation and consider any potential impacts on the devolved administrations. A Private Member’s Bill is therefore unlikely to be the appropriate legislative vehicle to take this forward. In any case, given that the Civil Partnerships, Marriages and Deaths (Registration etc.) Bill is already making progress through Parliament, any legislative changes are unlikely to be ready in time.

12. We have not ruled out the use of the Remedial Order process, but we are unable to say at this stage whether the necessary changes to the law could be made by way of a Remedial Order, or indeed whether it would be appropriate to proceed otherwise than by way of primary legislation.

13. However, since the Steinfeld judgment we have made significant progress in certain areas. For instance, the research that was due to be concluded in Autumn 2019 has been brought forward by a year and is now concluding. This will help us to ascertain the likely demand for opposite-sex civil partnerships, which is necessary information for us to generate an impact assessment on the effects of potential extension, covering issues such as the impact on pension provision and tax.
Annex 1
Registration of marriages and civil partnerships

(a) Use of “Marriage Documents” for marriages authorised by ecclesiastical preliminaries

i. Background

1. Clause 1(4)(f) of the Bill enables the Secretary of State to create regulations that provide that marriages solemnised by the CofE/CinW clergy and authorised by ecclesiastical preliminaries are to be registered by a “marriage document”, as opposed to the “marriage schedule” used for other marriages.

2. The “marriage document” envisaged by the Bill is needed to accommodate differences in the marriage process for marriages following “ecclesiastical preliminaries”, a long-standing preliminaries system that is unique to CofE and CinW marriages.

3. Presently, marriages in England and Wales can be solemnised on the authority of either:

   a. Civil preliminaries, which are followed by those wishing to marry in a register office, approved premises (secular premises), in a registered religious building, according to certain religious rites, or marriages involving housebound / detained people. They may also be followed by those wishing to marry according to the rites of CofE or CinW; or

   b. Ecclesiastical preliminaries, which may be followed by those wishing to marry according to the rites of CofE or CinW.

4. Civil Preliminaries: Where marriages follow civil preliminaries, they are solemnised on the authority of a certificate for marriage issued by a superintendent registrar.

5. Under this system the couple gives notice to their local superintendent registrar of their intention to marry. If there are no issues, the superintendent registrar will then, after a set period, issue a certificate for marriage. The certificate for marriage is then presented at the marriage ceremony and acts as the authority for the marriage to proceed and be solemnised. Following solemnisation, the couple, witnesses and registration officers will then sign the marriage register book in order to register the marriage.

6. For religious marriages, this register book is maintained at the location of solemnisation and registration is overseen by the appropriate members of that religious organisation. For non-religious marriages, the register book is maintained by the registrar and kept at the register office. The signing of the register is overseen by the registrar.
7. In addition, certain special preliminaries apply in niche cases such as deathbed marriages or marriages involving one party in Scotland, at sea or certain former dominions. These mechanisms are rather varied and I do not propose to consider them in detail here.

8. Ecclesiastical Preliminaries: “By virtue of its historically established position, the CofE has a number of special functions. Despite disestablishment, the CinW has partially retained certain roles in respect of marriages. Amongst these functions is the long-established ability to solemnise marriages following ecclesiastical preliminaries. However, CofE and CinW marriages may also proceed on the authority of a certificate issued by a superintendent registrar under the civil preliminaries system.”

9. The ecclesiastical preliminaries system enables CofE and CinW marriages to proceed (i) after the publication of banns of matrimony; (ii) on the authority of a special licence granted by the Archbishop of Canterbury; or (iii) on the authority of a common licence. These operate as follows:

a. Under the banns system details of the couple are entered into a banns book at their local parish church and then entries from the book are read out at Sunday service by the clergyman publishing the banns on three Sundays preceding the marriage. A certificate is not issued following the completion of the banns process unless the marriage is taking place in a different church to the one in which banns have been published in which case a ‘certificate of publication’ is issued to advise that banns have been published. The issue of an authority for a marriage to proceed is not required for marriages using banns.

b. Under the common and special licence procedures a license is issued by a diocesan registry (in the case of common license marriages) or the Archbishop of Canterbury (in the case of special license marriages). In both cases a licence is issued and then seen by the clergyman solemnising the marriage and acts as an authority for the marriage to proceed.

10. In all three cases, once the marriage is solemnised the couple will sign a marriage register book that is maintained by the clergy.

ii. Intended Reforms

11. The changes to the marriage registration system envisaged by Clause 1 of the Bill will streamline the marriage registration process for marriages following civil preliminaries by creating a form of document (called a “marriage schedule”) that can act both as an authority to the marriage and as a means for registering the marriage.

12. The changes will mean that the certificate for marriage issued by a superintendent registrar (which acts as the authority for the marriage) will be replaced by the
“marriage schedule”. This reform, crucially, does not materially alter the process of obtaining an authority for solemnising the marriage. Rather it only alters the form of document used as an authority.

13. The changes intend to replicate the “marriage schedule” process for marriages following ecclesiastical preliminaries, as far as practical, by using a “marriage document”. The “marriage document” will be near identical to the “marriage schedule”, containing the same information and following the same registration processes once issued. The key difference is that it will not serve as the authority to the marriage and it will be issued by the clergy rather than a superintendent registrar. These differences are needed to accommodate the underlying differences in the two systems of preliminaries.

iii. ECHR Implications

14. Engagement of Article 14: It could be argued that the introduction of slightly different registration processes for CofE/CinW marriages following ecclesiastical preliminaries and other marriages would engage Article 14 when read with Article 8, Article 9 or Article 12.

15. However, the Government takes the view that Article 14, when read with the other Articles, would not be engaged because:

   a. The reforms would not fall within the ambit of Article 9 since it is difficult to conceive that the minor administrative details of the documents used to register a marriage would be considered to relate to a person’s religious convictions or the manifestation of them.

   b. These matters would not fall within the ambit of Article 12 since the measures do not prevent any two parties from getting married, create any material obstacle to such marriage nor even make a significant change to the mode of marriage.

   c. It is possible that the reforms would be held to fall within the ambit of Article 8, as they involve the recording of personal data. Nonetheless, it Article 14 would not be engaged when read with Article 8 as there is no relevant difference in treatment for the purposes of Article 8 rights. This is because the content of data recorded in the marriage document and marriage schedule is intended to be the same and that data handled by the registration service in an identical way.

16. Justification of Interference: Even if Article 14 were found to be engaged the Government can demonstrate a clear legitimate aim for creating differential provision - namely to make limited reforms to the mode of marriage registration that make minimal interference with the existing preliminaries process and also respect existing CofE and CinW practices. This is because:
a. Firstly, the scope of the reforms pursued is limited to the manner of registration of marriage rather than a wider scope reform to the manner of solemnisation. Requiring the clergy to issue marriage documents that acted as an authority to a marriage would go somewhat beyond mere changes to the form of registration documents.

b. For instance, where marriages are solemnised following the publication of banns there is no ‘authority’ required to solemnise the marriage as the process of banns being read out in church enables solemnisation to proceed.

c. If the Government were to require some form of paper authority (such as a marriage schedule) in addition to banns this would result in material changes to the preliminaries process that would go beyond mere changes to registration documentation.

d. Secondly, the ecclesiastical preliminaries system reflects a long-standing system of religious rites and practices of the CofE and CinW. It is possible that if the Government were to make material changes to these practices that this would be held to interfere with the Article 9 rights of members of the CofE and CinW. The Government’s intended reforms therefore aim to minimise any interference with the existing ecclesiastical preliminary system.

17. The Government is satisfied that the approach taken would be considered proportionate to the aim pursued since there is little difference between the two processes. Both those marrying in the CofE and CinW will have their marriages registered via near identical processes. The only differences between the “marriage document” and “marriage schedule” are both minor and technical and are adopted to accommodate the existing practice of ecclesiastical preliminaries.

(b) Keeping records of marriages in a church or chapel

i. Background

18. Clause 1(4)(f) enables the Registrar General (RG) to make regulations making provision in relation to the keeping in a church or chapel of records of marriages solemnized according to the rites of the CofE or CinW in the church.

19. The intended use of this power is to allow the RG to make provision requiring churches and chapels to keep records of all marriages solemnized on their premises, comprising of the information entered into the marriage document.

20. Presently, religious organisations that conduct religious marriages keep a written record of such marriages, in the form of the marriage register which (subject to a few exceptions) remains with the organisation or premises on a permanent basis. By contrast, non-religious marriages are solemnised by a superintendent registrar and registered by a registrar who keeps the marriage register on the premises of a register office.
21. Under the proposed reforms, these hard copy marriage registers will be replaced with a centralised electronic register maintained by the registration service. This means that there will no longer be any general requirement for religious organisations to keep records of marriages conducted by them. However, religious organisations will not be prevented from keeping records if they wish to do so.

ii. ECHR considerations

22. It is arguable that the keeping of such records engages Article 14 when read with Article 8 as the measure entails additional recording of data for those marrying in the CofE and CinW as compared to other cohorts. However, the Government is satisfied that any such differential treatment is justified in order to prevent fraud, ensure that the civil registration service functions effectively, and enable parish records to continue to be used as a valuable historical record.

23. The differences in the ecclesiastical preliminaries and civil preliminaries systems mean that there is an increased risk of marriage fraud and non-compliance with registration requirements for CofE and CinW marriages if no records are kept by churches. Clause 1(4)(f) aims to reduce these risks.

24. At present, where marriages follow ecclesiastical preliminaries the registration service has no details of those marriages prior to the point of registration as the entire process is overseen by the clergy prior to that point. This will continue to be the case after the reforms are put in place. This stands in contrast to the position for marriages following civil preliminaries, where the registration service maintains an electronic record of the intended marriage that is created when notice is given to the relevant superintendent registrar by the couple. The keeping of records for CofE and CinW marriages is intended to overcome several difficulties that arise from this difference:

   a. The keeping of such records will help prevent the ecclesiastical preliminary system from being used to facilitate marriage fraud:

      i. Under the new reforms individuals marrying in the CofE or CinW (as with other religious marriages) will be responsible for delivering their marriage document to the applicable superintendent registrar so that the marriage can be registered on the central marriage register.

      ii. If the superintendent registrar had doubts about the authenticity of the marriage document provided to them or the information contained in it they would need to check it with the relevant member of the clergy who solemnised the marriage. However, if the clergy did not keep records of such marriages then it would be near impossible to verify this information leading to an increased risk of fraud.

      iii. This consideration does not arise for marriages that follow civil preliminaries since the details relating to the marriage would already
be electronically recorded in the “marriage schedule” by the superintendent registrar and be readily accessible to them.

b. The keeping of such records will enable the registration service to ensure that marriages following ecclesiastical preliminaries have been registered within the required time period:

i. Under the envisaged reforms there will be a requirement that all marriages must be registered with the relevant superintendent registrar within a certain period of the marriage being solemnised.

ii. In order for the registration service to enforce this obligation it is necessary for superintendent registrars to have access to details of marriages (including the proposed dates) that have taken place or are supposed to have taken place in their registration district. This information enables them to check they have received the completed marriage documents and marriage schedules for such marriages.

iii. Performing these checks would be straightforward for marriages that follow civil preliminaries since the superintendent registrar would have details of such marriages available to him electronically.

iv. However, superintendent registrars would not have details of any marriages following ecclesiastical preliminaries before the time of registration so they would be unable to perform these checks for such marriages. It is therefore anticipated that superintendent registrars will carry out these checks by confirming the details of any marriages that have taken place in their district with local churches. Naturally, if the churches did not retain records of marriages that took place on their premises this would make the checking process almost impossible.

25. In addition, parish registers kept by CofE and CinW churches and chapels represent a rich historical resource that stretches back to 1533. Owing to this long history, they are used by historians and genealogists far more frequently than records kept by other religious organisations. It is therefore intended that requiring CofE and CinW churches to continue to retain such records will enable them to continue to be used as a historical research tool into the future.

26. The Government is satisfied that these measures are proportionate in pursuing the legitimate aims outlined above. The data recorded by the church would not be particularly sensitive in nature (comprising primarily the information contained in the marriage document) and it is intended that the RG regulations will require that suitable levels of data security are applied to secure this information. In any event, the information contained in marriage documents would be publicly available through the registration service (as is currently the case with marriage certificates) so any loss of data would not result in disclosure of information that is not already publicly available. By contrast, the need to prevent marriage fraud, ensure the
marriages are properly registered and facilitate historical and genealogical research is of significant public interest.

Rt Hon Sajid Javid MP

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