

THE **LAW SOCIETY**
OF NORTHERN IRELAND



Department of Finance
Consultation
MARRIAGE LAW

**Response of the Law Society of
Northern Ireland**

February 2022

*96 Victoria Street
Belfast BT1 3GN
Tel: 02890 23 1614
Fax: 02890 232606
Email: enquiry@lawsoc-ni.org
Website: www.lawsoc-ni.org*

ABOUT THE LAW SOCIETY

The Law Society of Northern Ireland (the Society) is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (Northern Ireland) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitor's profession in Northern Ireland and to represent solicitors' interests.

The Society represents over 2,800 solicitors working in approximately 480 firms, based in 65 geographical locations throughout Northern Ireland and practitioners working in the public sector and in business. Members of the Society thus represent private clients, Government and third sector organisations. This makes the Society well placed to comment on policy and law reform proposals across a range of topics.

Since its establishment, the Society has played a positive and proactive role in helping to shape the legal system in Northern Ireland. In a devolved context, in which responsibility for the development of justice policy and law reform takes place at a local level, this role is as important as ever.

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Introduction

The Law Society of Northern Ireland welcomes the proposals to reform the law in respect of belief marriage and the minimum marriage/civil partnership age in Northern Ireland. This response has been informed primarily through the Society's Human Rights and Equality Group which is made up of experienced human rights solicitors practising in the public, private and third sectors.

Belief Marriage

The right to marriage is protected in international law by Article 23(2) of the International Convention on Civil and Political Rights (ICCPR) and Article 12 of the European Convention on Human Rights. The Law Society supports the proposals to recognise belief marriage in law in NI, thereby ensuring equality of treatment by putting belief marriage on an equal footing with religious marriage in line with Article 9 and 14 of the European Convention on Human Rights.

The Society notes the recent judgment in *Re Smyth*, cited within the consultation document. The case challenged provisions in the Marriage (Northern Ireland) Order 2003 (the 2003 Order) addressing the discrimination towards belief marriages contrary to Articles 9 and/or Article 14 of the ECHR. Interim arrangements are currently in place following the *Smyth* case, enabling aspects of belief marriage to be 'read in' to the 2003 Order. Explicitly legislating for belief marriage will clarify the position and help safeguard individual rights in the interests of equality.

Minimum age for Marriage and Civil Partnership

The current legislation in NI (Marriage (NI) Order 2003; Marriage Regulations (NI) 2003) falls short of international standards and commitments and raise child protection issues. There are several international and transnational treaties that explicitly state that the minimum justifiable age for marriage is 18, as outlined:

- [The Council of Europe Parliamentary Assembly Resolution 1468](#) on forced marriages and child marriages (2005) placed the obligation on States to undertake legislative and other measures to "fix at or raise to 18 years the minimum statutory age of marriage for women and men."

- In 2019, the UN Human Rights Council adopted its third resolution on Child, Early and Forced Marriage¹, under a theme of ‘consequences of child marriage’. The resolution built on previous recognition of child marriage as a human rights violation and called on UN Member States to “strengthen and accelerate action to address child marriage”. The UK was a co-sponsor of this resolution which urges States to enact, enforce, harmonise, and uphold laws and policies aimed at preventing, responding to, and eliminating child, early and forced marriage. The resolution further urges States to “remove any provisions that may enable, justify or lead to child, early or forced marriage”.
- The Office of the High Commissioner on Human Rights regards child marriage as forced marriage if one or both parties have not expressed full, free, and informed consent². Forced marriage is a criminal offence in the UK, but the UK’s current legislation regarding child marriage contradicts this. The parental consent loophole that exists in this jurisdiction has harmful unintended consequences across a range of communities. Parental consent is problematic when not regulated to ensure that the principle of the best interests of the child is applied. It is noteworthy that many reports mention the consent of parents, guardians, family members or administrative/judicial authorities, and only a few mention the consent of the child. This is important not only because free and full consent is a well-established criterion of all international norms on marriage generally, but also because Article 12 of the Convention on the Rights of the Child sets out the right of every child to freely express his or her views in all matters affecting them, and the right for those views to be given due weight.

Research from the United Nations Human Rights Commission shows that child marriage disproportionately affects young girls and often compromises a girl’s development by resulting in early pregnancy, social isolation, interrupting schooling, limiting opportunities for career and vocational advancement, and placing her at increased risk of domestic violence. Child, early and forced marriage is recognised as a form of gender-based discrimination, and subsequently constitutes a violation of rights and acts as an obstacle to the full enjoyment of rights³.

¹ <https://undocs.org/A/73/585>

² <https://www.ohchr.org/en/professionalinterest/pages/minimumageformarriage.aspx>

³ <https://www.ohchr.org/en/issues/women/wrgs/pages/childmarriage.aspx>

There are communities within Northern Ireland which are disproportionately affected by the loophole, one being the traveller community. A House of Commons report on the Irish traveller community in 2019 stated that “*A lack of awareness of consent culture and healthy relationships is leading to domestic abuse in young Gypsy and Traveller people’s lives⁴... girls would be raising their own and caring for extended families from a very young age.*”

In addition, current legislation in NI allows for opportunity for children to be moved to NI for the purposes of securing legal recognition of marriage/civil partnership. There is an increased risk of children being trafficked to NI and entering forced marriage. Therefore, the minimum age needs increased to protect children and young people from exploitation and harm. (**[Section 2\(1\) Modern Slavery Act 2015](#)**)

The UN Committee against Torture has recognised that child marriage may constitute cruel, inhuman, or degrading treatment, particularly where governments have failed to establish a minimum age of marriage that complies with international standards. Our failure to comply with international standards has a detrimental effect even further afield than our own communities. In 2017, Bangladesh re-legalised child marriage, and government officials there repeatedly cited the fact that child marriage is legal in the UK as justification. Other countries failing to enforce bans on child marriage have also cited the UK law to defend themselves.

Moreover, the minimum age for marriage has already been increased to 18 years in Republic of Ireland, and it is envisaged that it will also be increased in England and Wales through the [Marriage and Civil Partnership \(Minimum Age\) Bill](#) which is currently being progressed. The Society welcomes this move to ensure that children in NI enjoy equal levels of protection to those in neighbouring jurisdictions.

The Society is therefore supportive of the proposal to increase the minimum age of marriage/civil partnership to 18.

⁴ <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/360/full-report.html>

CONCLUSION

The Society welcomes the opportunity to submit a response in respect of the Consultation on belief marriage and minimum age for marriage or civil partnership and trusts that this response is useful. The Society's Human Rights and Equality Group would be happy to assist further with the proposals, should that be useful.