
The Law Commission's Project on Weddings Law Reform

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The Law Commission has consulted on provisional proposals for reform of the law governing how and where couples can get married in England and Wales. This article gives an overview of those proposals, with particular focus on religious weddings, including Anglican weddings. It examines proposed changes to each aspect of the process of getting married, from the preliminaries to the people required to officiate at the wedding, the permitted locations and the rules governing the content of the ceremony. The article argues that the legal status of marriage itself is highly flexible, recognising a range of unions. The proposed reforms aim to reflect the diverse range of views about the meaning of marriage, and ensure that the way in which the law recognises a legally binding wedding fits with the many different traditions according to which religious groups celebrate the formation of marriage.

Keywords: weddings, marriage formalities, Law Commission, law reform

THE PROJECT

The Law Commission's work on weddings began in 2015, when we agreed with Government to conduct scoping work to investigate the potential for a full law reform project. We published a scoping paper in December 2015.² After initially deciding in 2017 that it was not the right time to take forward work in the area, Government announced in the 2018 Budget that it would ask us to conduct a full project.³

After agreeing the Terms of Reference for the project with Government, we began work in July 2019, meeting with stakeholders, conducting research and

1 This is an expanded version of a presentation given by Professor Hopkins at the Ecclesiastical Law Society's conference on 'The solemnization of matrimony: past, present and future', held online on 20 March 2021.

2 Law Commission, 'Getting married: a scoping paper', 17 December 2015, available at <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-ij5xou24uy7q/uploads/2015/12/Getting_Married_scoping_paper_1.pdf>, accessed 26 May 2021.

3 HM Treasury, Budget, 29 October 2018, para 5.52.

drafting our Consultation Paper with provisional proposals for reform.⁴ Owing to the COVID-19 pandemic, we postponed publication of the paper until September 2020.⁵ Although the delay was driven by the insensitivity of launching a consultation on weddings law at a time when weddings were unable to take place, it enabled us to reflect on the impact the pandemic was having on weddings in England and Wales and to consider how to ensure that a future law contains greater resilience in the event of further disruption on a similar scale.

The public consultation on the commission's provisional proposals ran from 3 September 2020 until 4 January 2021. Approximately 1,600 consultees responded. The commission is currently analysing those responses to inform development of our final policy. We aim to publish our recommendations in a final report at the end of 2021.

The Law Commission's project is concerned with how and where couples can marry in England and Wales. We are considering every step in the process of getting married, from preliminaries through to registration. The review seeks to provide greater choice within a simple, fair and consistent legal structure. As outlined in the Terms of Reference, it is being guided by five principles for reform: certainty and simplicity; fairness and equality; protecting the state's interest; respecting individuals' wishes and beliefs; and removing any unnecessary regulation, so as to increase the choice and lower the cost of wedding venues for couples. The first four of these principles were identified by the Law Commission in our scoping paper as principles that should underpin any reform. The fifth was identified in the 2018 Budget announcement.

Because the review is a wide-ranging look at weddings law, it considers every step in the process. In particular, the project is looking at the following questions:

- i. Could the legal preliminaries that must take place before a wedding be streamlined?
- ii. How should the law be reformed to enable wedding ceremonies to take place in a wider range of venues, including outdoor locations, at sea and on military sites?
- iii. How should the law be reformed in relation to who can solemnise a marriage, including incorporating marriage by humanist and other non-religious belief organisations, and by independent celebrants?⁶

4 The full Terms of Reference are available on the Law Commission's weddings project page: <<https://www.lawcom.gov.uk/project/weddings/>>, accessed 26 May 2021.

5 Alongside the Consultation Paper, we published a summary in Welsh, an easy-read version of the summary and an at-a-glance overview, all available on our website (see note 4).

6 The prior question as to whether those groups should be able to solemnise weddings is excluded from consideration under our Terms of Reference and so we will not be making recommendations in that respect.

- iv. What content should be either required or prohibited as part of a wedding ceremony?
- v. How should marriages be registered and by whom?
- vi. What should the consequences of failing to comply with all or some of the requirements for a valid marriage be?
- vii. What offences are necessary to underpin the system governing weddings?

The project is also proceeding on the basis of certain assumptions, which are outlined in the Terms of Reference. Of particular relevance to this article are the assumptions that religious groups should continue to be able to conduct legally binding weddings, and that there will be no change to what amounts to a religion for the purpose of weddings law, as decided by the Supreme Court in *R (Hodkin) v Registrar General of Births, Deaths and Marriages*.⁷

Equally, there are subjects that are excluded from our work. Some of these exclusions are directly relevant to any consideration of religious (and belief) weddings:

- i. It is a corollary of the fact that religious groups will continue to be able to marry people that we are not considering universal civil marriage;
- ii. We are not considering the question of whether or not religious groups should be obliged to solemnise marriages of same-sex couples. Accordingly, under our recommendations, the quadruple lock of protections for religious groups in relation to same-sex weddings will be replicated in any new legislation;
- iii. We are not considering the duties of the Church of England and the Church in Wales to marry their parishioners;
- iv. Broader questions about who is eligible to marry (including the prohibited degrees), and the rights and responsibilities that marriage creates, are also outside the scope of the review.

THE PROVISIONALLY PROPOSED SCHEME

In the Consultation Paper we made provisional proposals for an entirely new scheme governing weddings law. It would replace the current scheme, which is outdated, overly restrictive and largely the product of the Marriage Act 1836. It would, in our provisional view, make the law simple, fair and certain. It would regulate the officiant rather than the location of where the wedding takes place. And it would, with very few exceptions, apply the same rules to all types of wedding, rather than impose separate regimes on them.

7 [2013] UKSC 77, [2014] AC 610.

Preliminaries

Under the current law, the preliminaries process is divided into two alternative processes: civil preliminaries, which can authorise any type of wedding, and Anglican preliminaries, which can authorise weddings in the Church of England or Church in Wales. Government has made regulations that will change the system for the registration of marriage.⁸ Couples will be issued with a document called a schedule, which will authorise their marriage. The schedule will be signed at the wedding and then returned for registration. A marriage document will perform the same role if the wedding is preceded by Anglican preliminaries. Our proposals were made in anticipation of these changes, which came into force on 4 May 2021.

Civil preliminaries

There are concerns about the current process for civil preliminaries. Couples must live in a registration district in England and Wales for seven days before they can give notice of their intention to marry at a register office in that district. There is then a 28-day waiting period before they can get married.⁹ This makes it very difficult for foreign residents to marry here, having to make a trip of at least seven days just to give notice, followed by another trip to get married, or to make a single trip of at least five weeks to give notice and get married. It may also be inconvenient for couples who do reside here: they may want to give notice in the district where they work, rather than where they live; if they live in different registration districts, they cannot give notice together. After notice is given, the notice must be published at the individual register office, in a 'conspicuous place'. We have heard that notices are rarely read by anyone, and in our discussions with stakeholders to date have not heard of an objection ever being made solely on the basis of a notice.

In order to address these concerns, we proposed a two-stage process for giving notice. First, each person would submit a notice of intention to marry, which could be done online, or by post or in person. This step would start the 28-day waiting period. Second, if notice had not been given in person, the individual would attend a register office for their in-person interview. Each individual would be able to choose the registration district where they would have their in-person interview. This interview would need to take place a certain period in advance of the authority for marriage—the schedule—being given. We invited consultees' views on whether that period should be three days, seven days or another period of time before the schedule is issued.

⁸ The Registration of Marriages Regulations 2021 (SI 2021/411).

⁹ There are distinct requirements where one of the couple is not a British citizen and does not have EU settled status.

By allowing the first stage to be given at any register office, online or by post, the process would be brought into the modern day, be more convenient for couples and be more efficient for local authorities. Together with abolishing the requirement to live in a particular registration district for seven days prior to giving notice, it would facilitate weddings in England and Wales of couples who are resident elsewhere.

We also proposed that notices of marriage should be published online. Doing so would increase the likelihood of impediments being discovered and promote the public nature of the process. Exceptions would apply where, for example, a history of domestic abuse meant that a person would be put at risk by their wedding being publicised.

Anglican preliminaries

Currently, couples having a Church of England or Church in Wales wedding can give notice to the Church authorities, instead of the civil registration service.¹⁰ There are three types of Anglican preliminaries: the publication of banns, common licences and special licences. The latter two are issued by Church authorities.

The rules governing Anglican preliminaries are complicated, are no longer effective and stand in contrast to civil preliminaries in important ways. As regards their complexity, the rules governing banns alone span 13 sections of the Marriage Act 1949. Moreover, some provisions about banns exist outside the Act, in Church of England Measures, meaning that the Act no longer fulfils its original purpose of codifying this part of the law. This complication increases the chances of errors being made. It may also place a significant administrative burden on clergy and those who support them, with banns being required to be called in up to three different churches (where the couple live in different parishes and are being married in a third).

In relation to the effectiveness of banns, with fewer people attending church services and with a more mobile society, it is less likely that publishing banns will reach an audience that knows the couple. Banns reflect a time when a relatively cohesive community coalesced around the church, which is no longer the case. Therefore, it seems that banns are no longer effectively publicising the marriage to discover impediments. Meanwhile, common licences and special licences, uniquely, allow a wedding to go ahead without any waiting period or publication. Further, Anglican preliminaries do not include a legal obligation on clergy to meet both of the couple, and clergy have no power to require documents to be produced (save for proof of nationality). Both of these limitations stand in stark contrast to the requirements for civil preliminaries, which are

10 Again, there are specific rules governing those who are not British citizens or who do not have EU settled status.

therefore more effective at protecting the state's interest—in ensuring that only those who are eligible to be married do so.

Anglican preliminaries also create a difference in treatment. Obviously, they are only available for Anglican weddings. Additionally, only relevant nationals (British citizens and those with EU settled status) are able to have their weddings authorised by way of banns or common licence.

Finally, there is the issue of limping provisions. Different options as to where banns can be called have been added over time. Some of these changes have been made by the Church of England, by way of Measures, which apply only to that Church. The result is that the law does not always apply equally to the Church of England and the Church in Wales, with the latter needing an Act of Parliament to change the law applicable to it.

There are two options for reform: to move to a system of universal civil preliminaries or to retain and improve Anglican preliminaries. We provisionally proposed that, if Anglican preliminaries are retained as legal authority for weddings, redundant provisions should be repealed. These include the provisions dealing with banns being called in Scotland, Northern Ireland or the Republic of Ireland, which are no longer realistic options given that those places have universal civil preliminaries. They also include the provisions dealing with war damage to churches.

We asked consultees whether banns should be required to be published only in the church where the wedding is to take place, to simplify the process and prevent duplication (preventing multiple churches from having to check the couple's nationality). We also asked whether Anglican clergy should have the power to call for and check documentary evidence from the parties; and be legally required to meet, or get declarations from, both of the couple, both for banns and for common licences.

These reforms are quite modest. That is because we think that it is difficult to rationalise the rules governing Anglican preliminaries against the criteria of providing certainty and simplicity, fairness and equality, and protecting the state's interest in ensuring that people are eligible to get married and protecting against forced marriages. It is apparent that banns fulfil a purpose, which is understandably valued, of providing a pastoral opportunity. But the question arises as to whether providing this opportunity is a sufficient reason to give Anglican preliminaries legal effect.

Although we think that the problems that we identified with Anglican preliminaries would be better resolved by moving to universal civil preliminaries, we are aware of the significance the issue holds within the Church of England and the Church in Wales, and we do not underestimate the pastoral value that attaches in particular to banns. We therefore asked consultees an open question about whether the law should move to universal civil preliminaries.

If universal civil preliminaries are introduced, then banns could continue to be published; indeed, the Churches could continue to require them as a matter

of course in order to maintain the pastoral opportunity that they provide. But they would no longer provide legal authority for a wedding to take place. A couple getting married according to Anglican rites would need to give notice to the civil registration service, like all other couples.

The officiant

Another important aspect of the law is the rules that govern who is responsible for attending the ceremony and registering the marriage. In our proposed scheme, this person is called the 'officiant'. However, under the current law, there is no one term for this person, and their roles vary. The rules are different in respect of each of the categories of wedding identified in the Marriage Act 1949: Anglican weddings, Jewish and Quaker weddings, all other religious weddings and civil weddings. Although there are rules about who must register a Jewish or Quaker wedding, there is no requirement for that person to attend the ceremony. Conversely, an Anglican wedding must be attended by a person in holy orders; and all other religious weddings must be attended by the person authorised to register the marriage (whether an authorised person or a registrar). Finally, a civil wedding must be attended by two people: a superintendent registrar and a registrar.

In addition to these different rules about who must attend, there are differences in the role they must play, illustrating the lack of consistency in the law. Most commonly, this person is only required to register the marriage. However, some categories have additional roles: Anglican clergy, for example, are also required to 'solemnise' the marriage.

Finally, the current rules suffer from unnecessary regulation. That is the case, in particular, with the requirement for both a registrar and superintendent registrar to attend all civil weddings. This increases cost for local authorities and couples, and limits availability of weddings at popular times, such as during the summer.

In the Consultation Paper, we proposed a system that rationalises these requirements. Under the scheme, there would be a new role of 'officiant': all officiants would have the same legal duties and responsibilities, and all weddings would have to be attended by one officiant. The focus of the regulation would be on this person and their responsibilities. All officiants would have the duty to ensure that the parties freely expressed consent to marry each other, that the other requirements of the ceremony (discussed below) were met and that the schedule was signed. Officiants would also be responsible for upholding the dignity and solemnity of marriage.

We further proposed the criteria that officiants and bodies who are able to nominate people as officiants (discussed further below) would have to meet, with a clear process for authorisation, monitoring and withdrawal of authorisation.

Under the proposed scheme, there would be up to five categories of officiants:

- i. **Registration officers** would be appointed by local authorities. They would officiate at civil weddings, but no longer attend and register religious weddings;
- ii. **Anglican clergy** would officiate at Anglican weddings;
- iii. **Nominated officiants** would be nominated by religious organisations (other than the Church of England and the Church in Wales) to officiate at all other religious weddings. If non-religious belief organisations were able to conduct weddings, nominated officiants would also be nominated by non-religious belief organisations;
- iv. **Maritime officiants** would officiate at civil weddings on cruise ships in international waters;
- v. If Government decided to enable independent celebrants to conduct legally binding weddings, **independent officiants** would be authorised by the General Register Office to officiate at civil weddings.

In this article, we consider the two types of officiant who will be responsible for conducting religious weddings—Anglican clergy and nominated officiants—in more detail.

Anglican clergy

We proposed that clerks in holy orders of the Church of England and the Church in Wales would, as is currently the case, be automatically authorised to officiate at weddings, by virtue of their ordination. This follows the position from the legislation in 1753, 1823 and the current 1949 Act. The underpinning reason for this special position has not changed: the Church of England and the Church in Wales are generally accepted as having a duty to conduct weddings of their parishioners when called to do so. This reflects the Church of England's established status and is one of the vestiges of establishment for the Church in Wales. A similar approach in Scotland—where ministers of the Church of Scotland are automatically entitled to conduct weddings—works well there.

As we explained in the Consultation Paper, we proposed that the exact definition of a clerk in holy orders—whether authorisation to conduct weddings is conferred simply on ordination or, as the Church in Wales suggested, upon those authorised to undertake public ministry—would be a matter for each Church. Accordingly, the Church of England and the Church in Wales would not need to apply to the General Register Office for their clergy to be authorised. Moreover, regulation of clergy would remain a matter for the Anglican Churches. However, as we explained in the Consultation Paper, if clergy were failing in their duties in relation to the ceremony, there would be an expectation that the Church would address the issue.

Nominated officiants

Other religious officiants would be nominated by religious organisations, to be authorised by the General Register Office. Under our proposed scheme, an organisation would have to establish three criteria in order to be permitted to nominate officiants. First, a religious organisation would be required to meet the *Hodkin* description of a religion:

a spiritual or non-secular belief system, held by a group of adherents, which claims to explain mankind's place in the universe and relationship with the infinite, and to teach its adherents how they are to live their lives in conformity with the spiritual understanding associated with the belief system.

If non-religious belief organisations were able to conduct weddings, they would have to meet a modified version of this description.¹¹ Second, an organisation would be required to have at least 20 members who meet regularly for worship or in furtherance of their beliefs. Third, an organisation would be required to have a wedding service or a sincerely held belief about marriage. We asked consultees whether there should be an express exclusion preventing organisations from nominating officiants if the organisation promotes purposes that are unlawful or contrary to public policy or morality.

We proposed that nominated officiants would be required to be 'fit and proper' persons. It would primarily be for religious organisations to ensure that the persons they were nominating were fit and proper. We explained that this standard would include requirements for the officiant to have undergone training and continuing professional development, determined by the officiant's nominating body. Further, nominated officiants would be prohibited from making a business of officiating at weddings, by elevating the making of profits above the expression of their beliefs.

Authorisation of a nominated officiant would be for an indefinite period. The General Register Office would maintain a public list of all nominated officiants. Primary responsibility for monitoring nominating officiants and withdrawing their authorisation would lie with the nominating organisation. However, the General Register Office would have the power to withdraw an officiant's authorisation where the nominating organisation failed to act.

The wedding ceremony

We also considered the rules governing the wedding ceremony itself. Once again, the current law imposes different rules depending on the category of wedding. One example is the rules governing the 'prescribed words'. Civil

¹¹ See Consultation Paper, paras 5.122–5.129 and consultation question 24.

ceremonies and religious ceremonies other than Anglican, Jewish and Quaker ceremonies must include each of the couple reciting the exact prescribed words (the declarations that each person is free to marry the other and the words of contract). In contrast, in Anglican, Quaker and Jewish ceremonies, the couple does not have to say the prescribed words; instead, the legislation leaves the regulation of those ceremonies to those groups.

There are also concerns about the form that civil ceremonies can take: in particular, the restriction which prohibits religious content in civil ceremonies, with only incidental religious references permitted. The application of this rule varies considerably. Whether content is identified as religious, and so prohibited, depends on a registration officer's familiarity with it, with content from some religions more likely to be prohibited than others.¹² In some cases, content and symbols with cultural, rather than religious, significance to the couple are being prohibited, and even features of historical venues (such as stained glass windows) are being identified as problematic. Fundamentally, these rules do not serve many couples who have civil ceremonies who wish to include content that has religious or cultural meaning for them, including same-sex couples who, in practice, are often unable to have a religious wedding ceremony.

Finally, the law requires some weddings to take place with open doors. The requirement only applies to civil weddings and weddings in registered places of worship; Anglican, Jewish and Quaker weddings are not legally required to take place with open doors. Moreover, this requirement does not appear to be serving a purpose: it does not, so far as we have heard, give rise to valid objections.

Under our proposed scheme, the same legal rules would apply to all groups, and to all types of weddings. Furthermore, our scheme does not regulate the content of ceremonies more than necessary, giving couples and religious groups freedom over their ceremonies and recognising the rich traditions that many faiths reflect in their own ceremonies of marriage.

The core requirement under our provisional proposals would be that, at every wedding ceremony, each of the couple would be required to express their consent to being married in the presence of each other, the officiant and two witnesses. But there would be no requirement to express consent in a particular way, and consent could be expressed non-orally. This proposal would accommodate the many ways in which people show their consent to be married in religious ceremonies: for example, by accepting a ring rather than reciting a vow. In this respect, our provisional proposals extend to all religions the freedom already enjoyed by the Anglican Churches, Jews and Quakers. Of course, all religious groups could continue to impose their own requirements about the

12 S Pywell and R Probert, 'Neither sacred nor profane: the permitted content of civil marriage ceremonies', (2018) 30 *Child and Family Law Quarterly* 415–436.

ceremonies that they conduct, including whose weddings they will conduct and the content of those ceremonies.

We also proposed that religious content should be able to be included in a civil ceremony, as long as the ceremony remains identifiable as a civil ceremony rather than a religious service. We asked whether the legislation should expressly state that certain elements would be permitted in a civil ceremony: for example, hymns or religious readings, imagery and songs. Finally, we proposed that there would be no requirement for open doors at any wedding.

The location of the ceremony

The current law is sometimes described as being a 'buildings-based' system. Most religious weddings must take place in a place of worship. But there are exceptions: Jewish and Quaker weddings can take place anywhere. And, although most Anglican weddings must take place in a public church or chapel, a wedding authorised by special licence can, as a matter of law, take place anywhere. In practice, however, the archbishop only issues such licences for weddings in places of Anglican worship, such as private college chapels.

Besides the inequality of having different rules for different religions, the rules do not work well for some religious groups. Some groups, particularly small religious groups or interfaith ministries, tend not to have their own buildings in which to conduct weddings. For other religious groups, their place of worship is not seen as a meaningful place for a wedding. We understand this is the case for some Muslim couples, for example.

In focusing regulation on the officiant, the scheme we proposed in the Consultation Paper is able to give greater freedom about where weddings could take place. Under our proposals, all types of weddings would be legally permitted to take place anywhere. A wedding could take place outdoors, in a private venue (such as a home or on a military site) and on inland, coastal and territorial waters.¹³ However, we asked whether civil weddings should be prevented by law from taking place in religious venues.

In order for a wedding to take place in a given location, the officiant would have to agree to the location. In doing so, the officiant would be responsible for considering that location's dignity and safety, in which regard the General Register Office would issue guidance. Religious organisations would be entitled to insist on their own requirements about where a wedding could take place, such as requiring that it be performed in a church, chapel, meeting house or gurdwara. Religions could therefore continue to conduct weddings only in their own places of worship if they chose to do so.

13 We made separate provisional proposals to enable weddings to take place in international waters on UK-registered cruise ships.

IN CONCLUSION: THE LEGAL MEANING OF 'MARRIAGE' AND THE NEED FOR FLEXIBILITY

In the 1,600 responses to the Consultation Paper we have received, it is apparent that there is a diverse range of views on our proposed scheme. However, a common theme is the high importance that consultees place on marriage and weddings, both for themselves and for society as a whole.

One of the criticisms we have received is that we have not engaged with the question of what marriage 'is'. To an extent, that criticism is relevant to capacity to marry, the rights and responsibilities of marriage, and the groups who can conduct legally binding weddings—matters that are specifically excluded from our project under the Terms of Reference. Our project is concerned with the process of getting married—the wedding—not the meaning of marriage itself.

We are very aware, however, of the many different meanings that marriage has for different people, and the variety of ways in which it is celebrated. That is something that has been clear from the beginning of our work on weddings in 2015. In that regard, we were struck by a recent capacity case in the High Court, in which Mr Justice Mostyn surveyed the case law on the meaning of marriage.¹⁴ In his decision, among other things, he made the following remarks: 'A shared economy is not of the essence of the marriage contract'; 'cohabitation is not an essential feature of the marriage contract'; and 'Sexual relations, and *a fortiori*, procreation are not essential features of the marriage contract.' We think these extracts demonstrate that the legal status of marriage is highly flexible. While many marriages will involve some or all of a shared economy, cohabitation, sexual relations and procreation, and some or all of these may be fundamental to how some individuals or religious faiths understand marriage, none are essential to its legal status. It is the broad, legal meaning of marriage that underpins our project and that our provisional proposals reflect in the legal process of getting married.

Therefore, it is with the flexibility of the legal meaning in mind that we have sought to devise a scheme that, as well as being simple and certain, fits with the many different ways in which people choose to celebrate their weddings. That is why, for example, we have provisionally proposed that weddings should be able to take place in any type of location, while recognising that some religious groups will wish to continue conducting weddings only in the buildings in which they worship. It is also why we have proposed that couples should be able to express their consent in any form, while ensuring that organisations, including the Church of England and the Church in Wales, will be able to require that only their prescribed liturgies be used.

14 *NB v MI* [2021] EWHC 224 (Fam).

While there may be many with strongly held religious beliefs who would not recognise the unions described by Mr Justice Mostyn as marriages, in law they are recognised as such. Of course, religious groups have the right to continue to celebrate and support only those marriages that fit with their views of what a marriage should be. Our proposals recognise and respect that. But the law is a different matter. The law governing weddings should reflect the diversity of marriages that are formed and celebrated in England and Wales. As we noted at the beginning of this article, the Terms of Reference for the project include the principle of respecting individuals' wishes and beliefs. That necessarily includes respecting the wishes of those of all faiths and none, and of those who choose to celebrate getting married religiously or civilly. We think our proposals do that, while also protecting the state's interest.

THE NEXT STEPS

As we noted above, we are considering the responses to our consultation and formulating policy, with a plan to publish our final report at the end of 2021. It will then be for Government to consider whether to pass legislation to implement the recommendations. Under the Protocol between the Lord Chancellor and the Law Commission, there is an expectation that Government will provide an interim response within six months and a final response within a year. But, ultimately, timing is in Government's hands.

Unlike some Law Commission projects, we have not been asked to draft a Bill to accompany our report. If Government decides to take our recommendations forward, time will be needed for Parliamentary Counsel to draft a Bill.