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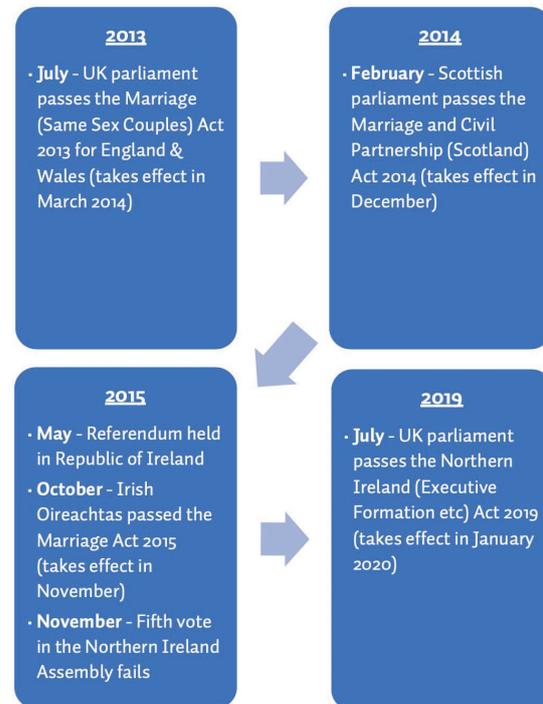
Same-Sex Marriage in the British Isles: A Heterogenous Legislative Process¹

The issue of legalising same-sex marriage has undergone a far from homogenous process in the British Isles². Although marriage for same-sex couples has now been legalised across all five countries of the British Isles as of the start of 2020, progress has not been observed at an equal rate. Legislation on same-sex marriage in the UK is a devolved issue, meaning that each constituent nation has the right to pass its own laws. This is in contrast to civil partnerships, which were introduced on a UK-wide basis by the UK parliament in Westminster with the Civil Partnership Act 2004 during Tony Blair’s Labour premiership. Ireland, as a separate country with an unconnected political system, introduces its own legislation.

The Legal Timelines

The first places in the British Isles to legalise same-sex marriage were England and Wales. The UK parliament in Westminster passed the Marriage (Same Sex Couples) Act 2013 in July 2013, with the law taking effect on 13 March the following year. Scotland followed shortly afterwards, where legislation passed in the Scottish Parliament in Holyrood in February 2014, coming into effect in December 2014. This left Northern Ireland as the only part of the UK where same-sex couples were not permitted to get married. Five years later, due to the Northern Ireland Assembly’s inability to resolve a deadlock, the UK parliament passed a bill to allow same-sex marriage (and abortion) in Northern Ireland in July 2019, which took effect on 13 January this year.

Meanwhile, south of the border in the Republic of Ireland, a referendum on same-sex marriage was held on 22 May 2015, resulting in 62% of votes in favour. This referendum was required to make a change to the country’s constitution and as a result, same-sex marriage was legalised in October 2015, coming into effect one month later. It therefore took six and a half years for the British Isles to reach a common legislative standpoint on marriage between same-sex couples.



One Issue: Multiple Arguments

England & Wales

The same-sex marriage debate began to gather pace in the United Kingdom at the beginning of the 2010s, after the election of the Conservative-Liberal Democrat coalition government led by David Cameron in May 2010. Despite leading the right-wing Conservative Party, Cameron adopted a more socially liberal approach in an attempt to modernise the Conservatives’ traditionalist image. One social issue touched upon during the party conference in October 2011 was same-sex marriage, where he declared: “I don’t support gay marriage despite being a Conservative. I support gay marriage because I’m a Conservative” (Cameron 2011). In order to convince the other members of his party and to garner public support, Cameron decided to promote the institution of marriage, a fundamental part of Conservative society. This was an innovative case for same-sex marriage – “perhaps the first time ever” (Winter 2017). Prior to this, arguments in other countries had been framed around the more traditionally liberal idea of equality for all.

In spite of Cameron's attempts to unite his party behind his socially liberal position, there were significant divisions among Conservative Members of Parliament. Many criticised the decision to introduce a vote on the issue without it having been a part of the 2010 election manifesto or the coalition agreement (Watt & Wintour 2012). The suggestion that the government did not have an electoral mandate to pass legislation on same-sex marriage further reinforced the opposition within Cameron's party. This split was evident when it came to the vote in parliament. Instead of a whipped vote forcing all Conservative MPs to back the bill, Cameron allowed a free vote, which resulted in an almost 50-50 division – 127 votes for and 137 against (Cowley & Stuart 2013). The bill was thus passed not because of the Conservatives, but because of the overwhelming backing from the Liberal Democrat MPs in the coalition and Labour MPs in opposition.

Scotland

During the Westminster vote on same-sex marriage in England and Wales, MPs from the Scottish National Party (SNP) abstained because the vote did not cover legislation in Scotland. Yet, same-sex marriage was a priority for the devolved Scottish Parliament governed by the SNP and talks quickly began to introduce similar legislation in Scotland. The majority of Members of Scottish Parliament were socially liberal as the two largest parties were the SNP and Labour. As a result, the bill to introduce same-sex marriage in Scotland passed with a much greater majority than had been the case in Westminster for England and Wales just months previously – 105 in favour versus 18 against. The 15 Conservative MSPs were as equally split in the Holyrood parliament as in Westminster, with 7 for and 8 against the bill, underlining the deep divisions within the party on a UK-wide basis over this issue.

Scotland has managed to maintain a positive record on LGBTQ rights since legislation on same-sex marriage was passed and was even ranked first in Europe for LGBTQ equality in 2015, just ahead of the rest of the UK (The Guardian 2015). Multiple prominent Scottish politicians from across the political spectrum have also come out as being LGBTQ, including party leaders Kezia Dugdale (Scottish Labour leader 2015-17), Ruth Davidson (Scottish Conservative leader 2011-19), Patrick Harvie (Scottish Green Party co-leader 2019-present), and David Coburn (Scottish UKIP leader 2014-18). This puts Scotland among the global leaders for LGBTQ

issues.

Republic of Ireland

Unlike all other countries that had legalised same-sex marriage before it, the Republic of Ireland put the matter to a public vote with a referendum to make constitutional change. The debate thus moved from the political to the public sphere. Whereas politicians in Westminster and Holyrood ultimately made the final decision that simply reflected general public opinion polls, the result of the Irish referendum was legally binding. A majority public rejection of the bill would have sidelined any possibility of marriage reform for many years to come. It was thus considered key for backers of the bill to reach out to as many people as possible in order to convince them of the importance of allowing marriage for same-sex couples.

An important role was played by the Catholic Church in Ireland. Like the Conservative Party under David Cameron, the Catholic Church realised that it needed to present a more modern picture of itself in order to combat declining numbers of churchgoers (Winter 2017). Indeed, same-sex marriage was endorsed by multiple important Catholics in Ireland "in the very name of their religion" (Winter 2017). Several other Catholic countries such as Spain, France and Argentina had already allowed same-sex couples to marry before Ireland, so it was certainly not ground-breaking. However, unlike France, where the widespread *Manif pour Tous* movement had a distinct religious following, the Irish debate did not pit the church against the people or the state (Winter 2017).

Northern Ireland

The fight for marriage equality in Northern Ireland has been a long one, much more complicated than anywhere else in the British Isles. Northern Ireland was the last remaining part of the British Isles to outlaw same-sex marriage until legislation took effect in January 2020, with the first ceremony being held on 11 February 2020. In the rest of the British Isles, there had been a convergence between public opinion and political positions. However, in Northern Ireland, there were strong differences that reflected the divide in Northern Irish society. Although many surveys showed the public to be generally in favour of same-sex marriage, the Northern Ireland Assembly repeatedly voted against proposals, in particular Protestant Unionist Members of the Legislative Assembly. It has been argued that there is a "seemingly universal moral

conservatism” (Glennon 2006) in Northern Ireland and religion remains an integral part of society. Nonetheless, opinion polls have also repeatedly shown Catholics to be more favourable of same-sex marriage than Protestants^{3, 4}, which reflects the positions of Catholics in the Republic of Ireland.

Same-sex marriage was discussed in the Northern Ireland Assembly a total of five times between 2012 and 2015. Proposals for amendments were brought forward by the Nationalist parties initially based on the principle of equality, although in the April 2013 motion, Sinn Féin evoked the constitutional convention, which made same-sex marriage an issue divided along community lines (Thomson 2016). On each of the first four occasions, the majority of MLAs voted against proposals. However, the fifth and final vote in 2015 returned a 50.5% majority in favour of same-sex marriage. In spite of this, the Democratic Unionist Party (DUP) tabled a *petition of concern*, a veto device introduced by the 1998 Good Friday Agreement to avoid the passing of laws in Northern Ireland without the support of both Unionists and Republicans (Mortimer 2015). Consequently, same-sex marriage was not legalised by the Northern Ireland Assembly as it did not acquire enough backing from Unionist politicians.

In January 2017, talks between the two Northern Irish communities broke down and the Northern Ireland Assembly in Stormont was suspended. Stormont’s doors remained closed for over two and a half years and in July 2019, the UK parliament gathered to vote on whether Northern Ireland should legalise same-sex marriage and abortion. This vote was to be implemented in the event of devolution failing to be restored in Northern Ireland by October 2019, which turned out to be the case. Legislation passed in Westminster thus became law in Northern Ireland and this came into effect in January 2020.

What Next after the Reintroduction of Devolution in Northern Ireland?

The Northern Ireland Assembly was reconvened in January 2020 just days before Westminster’s legislation on same-sex marriage took effect, but the decision could not be overturned. The DUP has been vocally critical of Westminster’s role during the suspension of the Northern Ireland Assembly, accusing it of violating the devolution agreement (BBC 2019). Indeed, it was not the first time the UK parliament had intervened while the Northern Ireland Assembly was suspended: civil partnerships

became legal in Northern Ireland in 2005 during a period of direct UK rule. Now that marriage has been introduced for same-sex couples, LGBTQ rights in Northern Ireland are almost identical to the rest of the UK. Nonetheless, the Northern Irish anti-discrimination laws on gender identity are not as comprehensive as the English, Welsh or Scottish laws. It remains to be seen whether the Northern Ireland Assembly will continue on a path started by Westminster towards complete equality for LGBTQ people in this new decade or whether there will be a period of stagnation or even suspension similar to the one in the 2010s. If new laws have to be passed by Westminster every time the Assembly is suspended, it throws into question devolution. For Northern Irish LGBTQ rights to reach full equality, the Northern Ireland Assembly needs to overcome its differences and act by itself in future, taking the example of Scotland.

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Notes:

¹ This paper is inspired by “Changing Attitudes? A Comparative Study of the Role of Politics and Political Discourse in the Development of Attitudes towards the LGBTQ movement in the United Kingdom and France in the 21st Century”, Master’s thesis submitted to the Centre international de formation européenne on 2 July 2019.

² The British Isles is formed of two countries, the Republic of Ireland and the United Kingdom of Great Britain and Northern Ireland, which is itself formed of four constituent countries (England, Wales, Scotland and Northern Ireland).

³ Northern Ireland Life and Times survey in 2012: Catholics 65%, Protestants 44%, No religion 73% agreed that marriages between same-sex couples should be recognised by law as valid (Thomson 2016).

⁴ Ipsos MORI survey in 2015 (the year of the referendum in the Republic of Ireland): Catholics 75%, Protestants 57% agreed that homosexual couples should be allowed to marry each other (Ipsos MORI 2015).

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