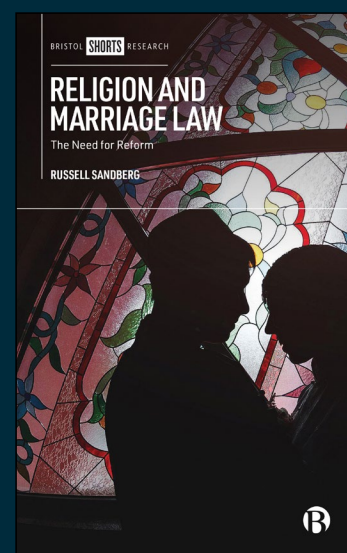


# Religion and Marriage Law: The Need for Reform

## SUMMARY

The law on marriage in England and Wales is in desperate need of reform because current rules indirectly discriminate against some religious groups by requiring religious weddings to take place in a registered place of religious worship in order to be legally binding. The law also provides no means by which weddings conducted by non-religious organisations (such as Humanists UK) or by independent celebrants can be legally binding. This means that both sets of couples need to undergo an additional civil marriage ceremony in order to become legally married. Many do not – and in some cases this is not a voluntary decision on the part of both of the parties – with the effect that they lack the legal rights that they often think they will have in the event of separation or death.

This research distils the complicated and confusing legal framework and provides an analysis of the debate to date, including recent litigation, Government reports and the work of the Law Commission. It argues the need for reform of the current legal framework on intimate adult relationships. It calls for a modernised law on marriage that regulates officiants rather than buildings and provides that religious and non-religious organisations alike can nominate such officiants. Independent celebrants would be able to apply as officiants, largely through the umbrella organisations that they belong to. This modernised marriage law would be complemented with an opt-out system of cohabitation rights on separation, similar to systems that exist in neighbouring jurisdictions.



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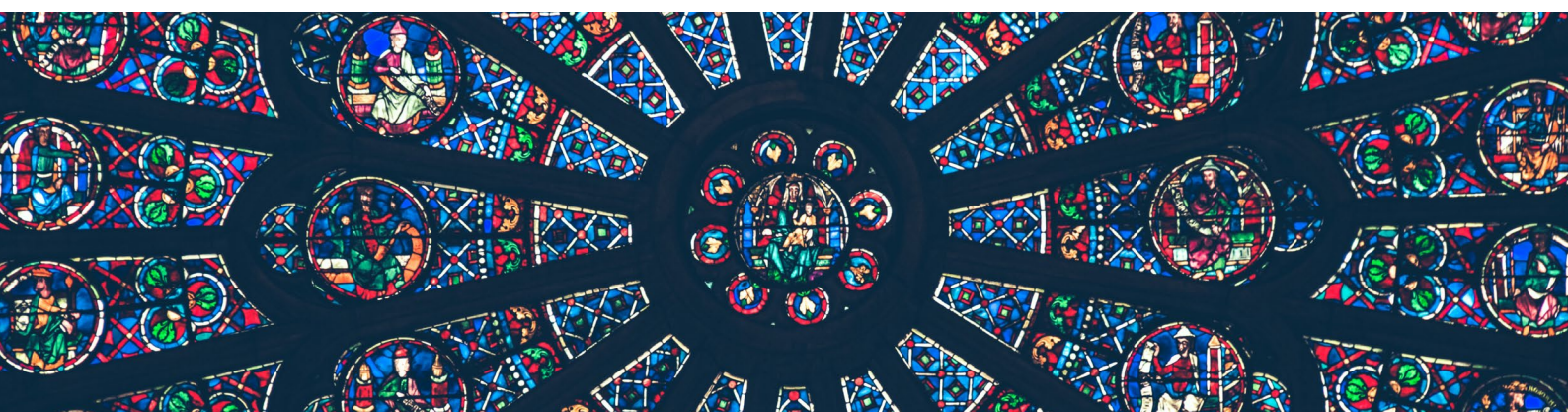
## KEY FINDINGS: THE CURRENT POSITION

- Marriage law in England and Wales has failed to adapt to the changing social reality of how intimate adult relationships now exist. Recent years has seen a considerable rise in cohabitation and a number of weddings that exist outside marriage law. This includes:
  - ◊ 'Unregistered religious marriages' where couples undergo a religious wedding ceremony that does not comply with the Marriage Act 1949 and therefore is not legally binding.
  - ◊ 'Non-religious marriage' conducted by belief organisations (such as Humanists UK) and independent celebrants, which are not legal binding.
- Marriage law enables religious marriages to be legally binding but only if certain requirements are complied with. These requirements differ for Church of England / Church in Wales, Quaker, Jewish and all other religions. For those in the all other religion category, the wedding has to take place in a registered place of worship in order to be legally binding. This rule indirectly discriminates against religions who do not have buildings or who have a tradition of weddings taking place elsewhere than in a place of worship.
- Marriage law does not enable non-religious marriages to be legally binding. It only provides for civil marriages in a register office or in approved premises which must be conducted by State employees.
- Those who enter into unregistered religious marriages or non-religious marriages have the same legal status as cohabiting couples. Unless they also undergo a civil wedding ceremony, they are not legally married and this means that they do not have the rights that married couples have on separation or death.
- Empirical research has shown that a number of Muslim women who go to Sharia Councils to determine questions of marital status do so because their marriages were not registered and so they cannot make use of secular courts.
- In a Court of Appeal case in 2020 (*Her Majesty's Attorney General v Akhter* [2020] EWCA Civ 122) it was confirmed that a woman who had undergone a religious wedding in 1998 and had had four children with her partner was not entitled to any recourse from the State when the relationship broke down.
- In a High Court case in 2020 (*R (on Application of Harrison) v Secretary of State for Justice* [2020] EWHC 2096 (Admin)), a number of couples who had or wanted a humanist wedding challenged the current law and it was held that the current law was discriminatory and not compliant with human rights but that this was only justified at present because of an on-going review by the Law Commission.
- The Law Commission published their initial proposals for consultation in September 2020, focusing on the law on how people get married and proposing an officiant-based system for religious organisations, with the Government being able to decide whether to extend this to belief organisations and independent celebrants.

## POLICY RECOMMENDATIONS – THE NEED FOR REFORM

- The current law is based on historical quirk and is out of date with the social reality. Legal change is needed to reflect two points of principle. The first is that legal redress should be provided to those in unregistered religious marriages but only where the failure to comply with registration requirements is unwitting or is not truly voluntary by one of the parties. The second is that non-religious ceremonies (such as those conducted by humanist organisations) and ceremonies conducted by independent celebrants should be legally binding.
- This can be achieved by a series of reforms to the law on adult intimate relationships. This would include both modernisation of marriage law and the provision of limited cohabitation rights in the form of an opt-out system of cohabitation rights on separation. Both of these changes would bring England and Wales in line with neighbouring jurisdictions.
- In terms of marriage law, there is a need to move from a system that regulates buildings to one that regulates officiants. There would be no requirement for there to be a building. As suggested by the Law Commission, an officiant must be in attendance at all weddings. But, unlike the Law Commission, this research proposes that the nominating organisation would not be limited to religion or belief organisations. If ceremonies by independent celebrants are made legally binding, then there is no reason to restrict the organisations who can conduct weddings to religious or belief organisations. Enabling all organisations to nominate officiants would also mean that umbrella organisations representing independent celebrants could do so. This would mean that, although individual application would be permitted, this would be exceptional and would only apply where the officiant is not a member of any organisation.
- Alternatively if the nominating organisation is limited to religion or belief organisations then there would be a need for a much more effective definition of belief than the Law Commission proposes which could draw upon the Irish law definition of a secular body.
- These changes to marriage law would solve the concerns around non-religious marriages and would lessen concerns about unregistered religious marriages since the discriminatory requirements that prevent some religious weddings from complying with the law would be removed.
- However, there would still be some unregistered religious marriages – and some of these would not result from a voluntary and witting choice by both of the parties. The introduction of limited cohabitation rights on separation would deal with this. This would provide an opt-out system that would apply to parties on separation to allow a cohabitant to seek a financial order in circumstances where they have suffered a financial detriment as a result of the relationship coming to an end. This would apply to all cohabiting couples, not just those in unregistered religious marriages.

These reforms would resolve the issue of non-religious marriages meaning that the thousands of ceremonies already conducted by the likes of Humanists UK and independent celebrants would be legally binding. They would also reduce the number of unregistered religious marriages that occur because of current discriminatory legal requirements and provide a remedy where other unregistered religious marriages end unless the couple has explicitly chosen to opt out of legal protection.



## About the book

Marriage law in England and Wales is a historical relic which reflects a bygone age.

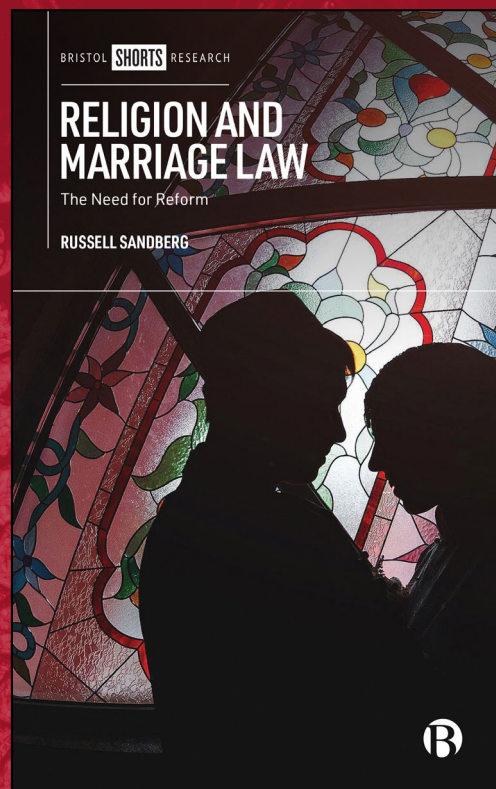
Successive governments have made a series of progressive but ad hoc reforms, most notably the introduction of civil partnerships and same-sex marriage. However, this has resulted in a legal framework which is complex and controversial, especially in relation to religion.

This book provides the first accessible guide to how contemporary marriage law interacts with religion and identifies pressure points in relation to non-religious organisations and unregistered religious marriages. It reveals the need for the consolidation, modernisation and reform of marriage law and sets out proposals for how the transformation of these laws can be achieved.

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