

Marriage (Same Sex Couples) (Overseas Territories) Bill

Press release, Wednesday 6th July 2022

Lord Cashman has introduced a Private Members' Bill in the House of Lords to make same sex marriage lawful in those British Overseas Territories where it is currently unlawful.

The Bill extends to six Overseas Territories: Anguilla; Bermuda; British Virgin Islands; Cayman Islands; Montserrat; and Turks and Caicos Islands.

If passed, the Bill would make same sex marriage lawful in six Overseas Territories and empower local governors – who are appointed by Her Majesty The Queen – to make changes to the law that are necessary to allow weddings of same sex couples to take place.

Provisions in the Bill would introduce equal civil marriage for same sex and different sex couples, and protect individuals and religious organisations from being compelled to conduct religious same sex marriages.

The Bill had its First Reading on 6th July 2022 and now awaits a date to be scheduled for its next stage in the House of Lords.

Lord Cashman said:

“This Bill has one single purpose, and that is to bring about equality. Currently, same sex couples can marry in the UK but are prohibited from marrying in six British Overseas Territories. This is wrong, and the UK Parliament can and should act to end this obvious inequity. I believe this Bill has wide support among all those who favour equality over discrimination and are committed to upholding fundamental human rights.”

Nancy Kelley, CEO of Stonewall (she/her) said:

“The freedom to be who we are, to love who we love, and to marry if we want to, is a fundamental human right. Marriage equality is something we are rightly proud of here in the UK, but we cannot say that we truly have achieved equality when LGBTQ+ citizens in the British Overseas Territories are left out in the cold. This Bill is an opportunity to right that wrong, and we hope all parliamentarians will support it.”

Professor Paul Johnson OBE, Executive Dean of Social Sciences at the University of Leeds, who worked with Lord Cashman to create the Bill, said:

“The UK and the Overseas Territories, along with the Crown Dependencies, form one undivided Realm. It is wrong, therefore, that some same sex couples, simply because of where they live, are denied the basic human right to marry that is enjoyed by others. The UK Parliament should legislate to ensure that all couples, regardless of sexual orientation, are treated equally.”

Further information for editors

Same sex marriage is lawful in seven Overseas Territories: the British Antarctic Territory; the British Indian Ocean Territory; the Falkland Islands; Gibraltar; the Pitcairn Islands; Saint Helena, Ascension and Tristan da Cunha; and South Georgia and the South Sandwich Islands.

In the Sovereign Base Areas of Akrotiri and Dhekelia, provision is made for marriage (including the marriage of same sex couples) between two people where, inter alia, one of the proposed parties to the marriage is a member of Her Majesty's armed forces.

Same sex marriage is not lawful in six Overseas Territories: Anguilla; Bermuda; British Virgin Islands; Cayman Islands; Montserrat; and Turks and Caicos Islands.

Purpose of Lord Cashman's Bill

The purpose of the Bill is to make same sex marriage lawful in the six Overseas Territories where it is currently unlawful: Anguilla; Bermuda; British Virgin Islands; Cayman Islands; Montserrat; and Turks and Caicos Islands.

The Bill empowers the Governor of each Territory to make changes to the law in the Territory to recognize the lawfulness of same sex marriage and allow for the solemnization of marriage of same sex couples.

The Bill also protects individuals and religious organisations that do not wish to conduct or participate in a religious marriage on the ground that it is a marriage of a same sex couple.

Legislating for the Overseas Territories

There is no limit to the power of Parliament to enact primary legislation for any of the Overseas Territories.

As the UK Government has recognized, it "has responsibilities towards the people of the Territories" and, whilst it "acknowledges the sensitivity of this area of work", it "believes that those living in the Territories have a right to expect the same high standards of governance as in the UK, including in the areas of human rights..." (Cm 8374, 2012, p. 9). This requires the UK to "promote the political, economic, social and educational advancement of the people of the Territories, to ensure their just treatment and their protection against abuses..." (Cm 8374, 2012, p. 13).

Therefore, by legislating to make same sex marriage lawful in the six Overseas Territories, Parliament would be ensuring that same sex couples receive equal treatment and are protected against discrimination on the grounds of sexual orientation.

Recent legal developments in Bermuda and the Cayman Islands

The Judicial Committee of the Privy Council – the final court of appeal for the British Overseas Territories – recently ruled that Bermuda law, which prohibits same sex couples from marrying, is constitutional. The Privy Council also recently ruled, in respect of a case brought

by Ms Chantelle Day and Ms Vickie Bodden Bush who wish to marry, that there is no right to same sex marriage under the Cayman Islands' Constitution.

Dr Leonardo J Raznovich, Barrister, and expert in the laws of the British Overseas Territories, stated in support of Lord Cashman's Bill:

"The decisions of the Privy Council against equal marriage for Bermuda and the Cayman Islands, while disappointing must be accepted on the understanding that the UK Parliament, which was responsible for the implementation of their constitutions, failed to protect vulnerable minorities properly. Further, the Privy Council made it clear that it recognised the historical background of stigmatisation, denigration and victimisation of gay people and that its decisions would create among them a sense of exclusion and stigma. The Privy Council, hence, saw force in the policy argument of equal marriage, which indeed they expressly stated in the decision for Bermuda. The clarity brought about by the Privy Council's decisions in this regard means that all remedies and corrections through the judicial process have been exhausted and that the British Government can therefore no longer escape its own responsibility for the situation of vulnerable minorities in Bermuda and the Cayman Islands and other territories as a matter of policy. The UK Parliament through this Bill aims to correct the serious injustices that the Privy Council's decisions have manifested. It will put an end to the unjustified discrimination and segregation on grounds of sexual orientation that British citizens face in relation to access to equal marriage in Bermuda, the Cayman Islands, the British Virgin Islands, Anguilla, Montserrat and the Turks and Caicos. It must be noted that in the last four territories there is currently no local legislation in place at all to protect LGBTI people, which is in itself a breach of numerous provisions of the European Convention on Human Rights or other international agreements. This Bill, if enacted into law, will therefore address the ongoing breaches by these last four territories of international obligations of the UK. It will also implement recommendations of the Foreign Affairs Select Committee of February 2019 by legislating marriage equality for all British citizens. Crucially, this Bill does not take anything from anyone but rather achieves a levelling up of disenfranchised vulnerable minorities with the rest of society. By bringing about full equality to these Territories, as Colours Caribbean has been advocating for many years, it will mean that Chantelle and Vickie and other couples will no longer need to seek exile in other parts of the UK and its territories away from their homeland, families and friends."

Lord Cashman biography

Michael Cashman CBE is a former Labour MEP and currently a Labour peer of the House of Lords.

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