

**From the Office of the  
Minister of Finance & Personnel**



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Your reference:  
Our reference: SUB/23/2015

3 March 2015

Dear *MARCO*

I am writing with regard to section 9 of the Marriage and Civil Partnership (Scotland) Act 2014 (order-making power which allows for the amendment of the definition of "qualified civil partnership").

As you may know, I raised concerns when Alex Neil MSP first proposed a provision to allow for the changing of non-Scottish civil partnerships. At that stage I suggested that the calls to amend the Marriage and Civil Partnership Bill had not been fully thought through and proposed that those calls should be resisted on legislative competence grounds. In the event an order-making power was added to the Bill. However, I hoped that, given the concerns that had been raised, the power would not be exercised.

I understand the Scottish Government is actively considering the exercise of the power and I am, therefore, writing to re-state, and elaborate on, my concerns.

As I have said previously, the change process is flawed because the civil partnership will not be dissolved and the couple will, therefore, have a "dual status". There was a fear that that could lead to separate proceedings in separate jurisdictions, with no opportunity for a court to cede jurisdiction. However, it would appear that the position is even more complex than that. For example, if a couple are in a civil partnership in Northern Ireland, that civil partnership will be recognised elsewhere in the UK. If that couple then "change" the civil partnership to a marriage in Scotland, the civil partnership will still subsist and the courts in Scotland could be faced with having to simultaneously recognise the marriage and the civil partnership (i.e. there is no way of determining which relationship should take precedence).

That could cause particular difficulties in the context of gender recognition because those in a Scottish marriage will have the option of remaining in the marriage if there

is an application for a gender recognition certificate, but those in a Northern Ireland civil partnership will not. The question then is “How should the couple be treated – as Scottish spouses or civil partners from Northern Ireland?”.

The question of treatment does not just arise intra-UK, overseas jurisdictions may raise queries about the status of the couple.

The uncertainty over the couple’s status could also create difficulties for third parties, who may have dealings with them.

I recognise that the Scottish Government is supportive of the order-making power. However the exercise of the power could create real problems and I am sure that is something that we would all wish to avoid.

I believe the balance lies in favour of the non-exercise of the order-making power. However, if that option is rejected, I would ask that the power is exercised in such a way as to exclude Northern Ireland civil partnerships.

Yours sincerely

A handwritten signature in blue ink that reads "Simon". The signature is written in a cursive, flowing style.

**SIMON HAMILTON MLA**