



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

**DFP Private Office
2nd Floor
Clare House
303 Airport Road West
Belfast BT3 9ED**

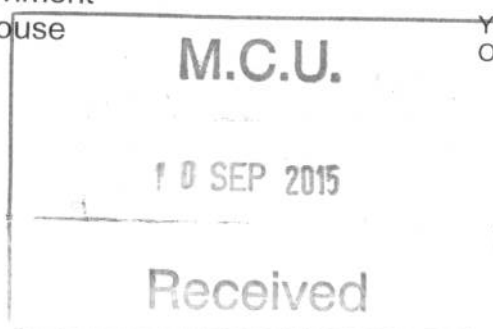
Telephone: 028 90816711

Email: private.office@dfpni.gov.uk

Your reference: A11120863

Our reference: COR/1245/2015

Marco Biagi MSP
Minister for Local Government and
Community Empowerment
Scottish Government
St Andrew's House
Edinburgh
EH1 3DG



4 September 2015

Dear Marco

Thank you for your letter of 22 May which was in response to a letter of 3 March 2015 from my predecessor, Simon Hamilton MLA.

I know Minister Hamilton had raised a number of concerns with regard to the exercise of the order-making power in section 9 of the Marriage and Civil Partnership (Scotland) 2014 and I am grateful to you for having taken the time to consider and respond to those concerns. I have carefully reflected on the points that you have made. However, I too am concerned about what is proposed. I am keen to continue the dialogue between our administrations in the hope that we can reach an agreed settlement and I thought it might be helpful if I set out my own thoughts.

Firstly, there is little to be gained from the fact that, post-conversion, the Scottish courts will regard the non-Scottish civil partnership as having ended. The partnership will continue to exist under the law of the home jurisdiction and the parties will, therefore, have a "dual status", with which they, other parties and other jurisdictions will have to grapple. I am sure we would both concede that, from time to time, a policy will produce unforeseen difficulties. However, as policy makers we strive to minimise that possibility and I am sure that neither of us would wish to place same sex couples in an uncertain legal position, which may be difficult and expensive to resolve. In this instance, we can achieve legal certainty by restricting the definition of a "qualifying civil partnership" so as to exclude civil partnerships which were entered into in Northern Ireland.

Secondly, with regard to dissolution, we believe a deemed civil partnership can only exist in Northern Ireland if the Scottish marriage did not result from the conversion of a Northern Irish civil partnership (i.e. a deemed civil partnership cannot exist alongside the original partnership). That belief is, however, untested and that is another reason why the definition of "qualifying civil partnership" should be restricted.

Finally, I think it would be helpful if there were UK-wide discussions with the Secretariat to the Gender Recognition Panel and I have asked my officials to liaise with yours in that regard.

Yours sincerely

A handwritten signature in black ink that reads "Arlene Foster". The signature is written in a cursive style with a large initial 'A' and a long horizontal stroke at the end.

ARLENE FOSTER MLA

Minister for Local Government and Community Empowerment
Marco Biagi MSP

T: 0300 244 4000
E: scottish.ministers@gov.scot



Ms Arlene Foster
DFP Private Office
2nd Floor, Claire House
303 Airport Road West
Belfast
BT3 9ED



By email to: private.office@dfpni.gov.uk

Your ref: COR/1245/2015
Our ref: 2015/0031465

24 November 2015

Dear Ms Foster

ORDER UNDER SECTION 9 OF THE MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014: CIVIL PARTNERSHIPS REGISTERED OUTWITH SCOTLAND CHANGING TO MARRIAGE IN SCOTLAND

Thank you for your letter of 4 September 2015. I apologise for the delay in responding.

I have considered the issues very carefully but concluded that it would not be appropriate to exclude civil partnerships registered in Northern Ireland from the Order. The Order has now been agreed by Parliament and will come into force shortly.

We recognise the first point you make on uncertainties. As you know, we have produced guidance for couples which says that it is not certain how their relationship will be recognised in the jurisdiction which registered their civil partnership and indicates that they may wish to obtain their own legal advice.

On your second point, Articles 6 and 7 of the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (SI 2014/3229) makes provision on the treatment of Scottish same sex marriages in Northern Ireland. Article 6 of the Order provides that under the law of Northern Ireland, a Scottish marriage of a same sex couple is to be treated as a civil partnership registered in Scotland. This Order was made by UK Ministers and the Scottish Ministers cannot change it.

However, my officials asked UK officials in June of this year whether SI 2014/3229 should be changed so that a couple in a Northern Ireland civil partnership who change their relationship to marriage in Scotland would still be treated as being in their Northern Ireland civil partnership in Northern Ireland.

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Clearly, it would remain the case that any dissolution in Northern Ireland of their relationship would be treated as ending the marriage in Scotland.

As I say, changes to SI 2014/3229 are not in the gift of the Scottish Ministers as this SI is outwith our jurisdiction.

On your final point, my officials have indicated that they would be happy to take part in UK-wide discussions with the Secretariat to the Gender Recognition Panel about the gender recognition implications of a couple in a civil partnership registered in Northern Ireland changing their relationship to marriage in Scotland. I am aware that officials from the UK Ministry of Justice are currently setting this meeting up.

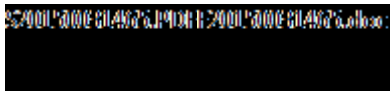


MARCO BIAGI

Devlin C (Catherine)

From: Stockwell SW (Simon)
Sent: 02 October 2015 10:31
To: Rankin L (Liam)
Subject: MACCS - Copy of case 2015/0031465 documents.

Please find the attached documents...





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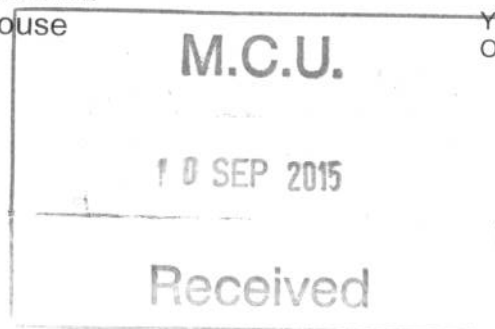
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ARLENE FOSTER MLA

Minister for Local Government and Community Empowerment
Marco Biagi MSP

T: 0300 244 4000
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Ms Arlene Foster
DFP Private Office
2nd Floor, Claire House
303 Airport Road West
Belfast
BT3 9ED



Your ref: COR/1245/2015
Our ref: 2015/0031465
October 2015

ORDER UNDER SECTION 9 OF THE MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014: CIVIL PARTNERSHIPS REGISTERED OUTWITH SCOTLAND CHANGING TO MARRIAGE IN SCOTLAND

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Marco Biagi

Devlin C (Catherine)

From: [REDACTED] on behalf of zzzMinister for Local Government and Community Empowerment 2014 to 2016
Sent: 06 October 2015 14:43
To: Stockwell SW (Simon); Rankin L (Liam)
Cc: zzzMinister for Local Government and Community Empowerment 2014 to 2016
Subject: Response to Arlene Foster MLA - 2015/0031465

Liam, Simon

Mr Biagi has requested one small change to the response drafted for Arlene Foster MLA. We will make this change and send it out today or tomorrow.

However, for their awareness, the Minister has asked if you could draft a short minute on this and send to DFM and Mr Neil, in case this comes up at interjurisdiction discussions.

Regards

[REDACTED]

[REDACTED]

Devlin C (Catherine)

From: [REDACTED] on behalf of zzzMinister for Local Government and Community Empowerment 2014 to 2016
Sent: 05 November 2015 12:14
To: Stockwell SW (Simon)
Subject: RE: Changing non-Scottish civil partnerships into marriages in Scotland: briefing note on concerns raised by UK Government and Northern Ireland administration

Simon

Mr Biagi also wants this to go to FM and Ms Hyslop. Do you want to resend or me to forward on for info?

Regards

[REDACTED]

[REDACTED]

From: Stockwell SW (Simon)
Sent: 03 November 2015 17:35
To: Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy; Cabinet Secretary for Social Justice, Communities and Pensioners' Rights
Cc: Minister for Community Safety and Legal Affairs; Minister for Local Government and Community Empowerment; DG Learning & Justice; Director of Justice; Marshall J (Jan); Grieve KB (Karen); Jack S (Sandra); Rankin L (Liam); Mojee N (Neel); Jays R (Ruth); Simpson D (Donna); Campbell J (Jeanette); UK Relations Team; Stout A (Alison)
Subject: Changing non-Scottish civil partnerships into marriages in Scotland: briefing note on concerns raised by UK Government and Northern Ireland administration

<< File: Changing non-Scottish civil partnerships into marriages_ briefing for inter-jurisdictional meetings.obr >> << File: Changing non-Scottish civil partnerships into marriages_ briefing for inter-jurisdictional meetings.docx >>

PS/Deputy First Minister
PS/Cabinet Secretary for Social Justice, Communities and Pensioners' Rights

Routine.

We have just made an Order allowing couples in a civil partnership registered outwith Scotland to change their civil partnership into marriage in Scotland. Both the Northern Ireland administration and the UK Government raised some concerns about this Order. Mr Biagi noted that they might raise the issue at inter-jurisdictional meetings. In case they do, I attach a two page briefing note.

Simon Stockwell
 Family and Property Law
 X 43322

THE QUALIFYING CIVIL PARTNERSHIP MODIFICATION (SCOTLAND) ORDER 2015: CHANGING CIVIL PARTNERSHIPS REGISTERED OUTWITH SCOTLAND INTO MARRIAGES

Lines to take

- **We made this Order following careful consultation, including with the UK Government and the Northern Ireland administration.**
- **Reflecting comments made by consultees, we prepared and published guidance for couples who are considering changing their civil partnership registered outwith Scotland into marriage.**
- **We fully appreciate that any decisions on the introduction of same sex marriage in Northern Ireland are for Northern Ireland.**

BACKGROUND NOTE

1. The Marriage and Civil Partnership (Scotland) Act 2014 introduced same sex marriage. It also allowed couples in a civil partnership registered in Scotland to change their relationship into marriage, if they wish. They can do this by having a marriage ceremony (which can be religious or belief or civil) or by going through a simple administrative ceremony run by local authority registrars.

2. The Stage 1 report on the Bill suggested, following comments by the Equality Network, that couples in a civil partnership registered outwith Scotland should also be able to change their relationship to marriage in Scotland, if they so wish. Following discussion, the Bill was amended at Stage 2 to empower the Scottish Ministers to make an Order allowing this.

3. The relevant Order (the Qualifying Civil Partnership Modification (Scotland) Order 2015 has now been made and came into force on 31 October. It allows couples in a civil partnership registered outwith Scotland to change their civil partnership into marriage in Scotland through having a marriage ceremony. (The administrative route is not available as that is designed for couples in civil partnerships registered in Scotland, where the registrar already has information on the civil partnership).

4. We carried out two brief consultations on the Order: one on general principles and one on a draft of the Order. Both the UK Government and the Northern Ireland administration expressed concerns.

5. The main concern of the UK Government was about the legal consequences –for example, what would a couple who change their non-Scottish civil partnership to marriage in Scotland be treated as in their home jurisdiction or in third countries. We were able to meet some of the UK Government's concerns by producing guidance for couples about them checking this type of issue for themselves, obtaining their own legal advice if necessary. Other consultees had also suggested that SG guidance should be produced.

6. Northern Ireland shared this type of concern but also had concerns based on their general approach to same sex marriage.

7. Northern Ireland would have preferred Northern Irish civil partnerships to have been excluded from the Order and their Ministers wrote to Mr Biagi accordingly. However, an exclusion just for Northern Ireland would have been very difficult to justify.

8 The Republic of Ireland has introduced same sex marriage following its referendum. It also allows couples in a civil partnership registered outwith the jurisdiction to get married. This is largely driven by their constitution, which promotes marriage. Now that marriage has been extended to same sex couples, the Republic intends to end recognition of non-Irish civil partnerships but will allow persons in such civil partnerships to marry in Ireland.

Contact: Simon Stockwell x 43322
0131 244 3322



Devlin C (Catherine)

From: Stockwell SW (Simon)
Sent: 25 November 2015 14:03
To: zzzMinister for Local Government and Community Empowerment 2014 to 2016
Cc: Rankin L (Liam)
Subject: FW: 2015/0031465
Attachments: RE: Changing non-Scottish civil partnerships into marriages in Scotland: briefing note on concerns raised by UK Government and Northern Ireland administration; Changing non-Scottish civil partnerships into marriages_ briefing for inter-jurisdictional meetings.docx

PS/Minister

Hi. This has already been done – see above.

Simon Stockwell
X 43322

From: Rankin L (Liam)
Sent: 25 November 2015 13:46
To: Stockwell SW (Simon)
Subject: FW: 2015/0031465

From: [REDACTED]
Sent: 25 November 2015 13:34
To: Rankin L (Liam)
Cc: Minister for Local Government and Community Empowerment
Subject: 2015/0031465

Hi Liam

Mr Biagi is content with the amended response. Before issuing, he has asked that a minute be sent to the Cab Sec and possibly FM and DFM in case it comes up in inter jurisdiction discussions. Mr Biagi has noted that he is not prepared to single out NI as the only jurisdiction in the world whose civil partnership we cannot convert to marriage.

Kind regards

[REDACTED]