

**RESTRICTED - ADVICE TO MINISTERS****ANNEX E16****BRITISH-IRISH COUNCIL SUMMIT: SAME SEX MARRIAGE****Top Line(s):**

1. On 4 February 2014, the Scottish Parliament passed the Marriage and Civil Partnership (Scotland) Act 2014 by 105 votes to 18, the third largest majority of any equal marriage vote in the world. Scotland is the 17<sup>th</sup> country worldwide to legalise same sex marriage, and the introduction of the Act is considered to have removed the final major piece of sexual orientation discrimination from law.
2. The Act, which received Royal Assent on 12 March 2014, introduces same sex marriage and the registration of civil partnership through religious and belief ceremonies whilst also putting in place a number of protections in relation to freedom of religion and conscience. The Scottish Government is working closely with the UK Government on a section 104 Order to ensure the required amendments to the Equality Act 2010 are made before the first same sex marriages in Scotland take place.

**Key Points / Summary of any Issues:**

3. Various situations exist regarding other countries represented on the British-Irish Council approach to same sex marriage. The intentions of both the UK Government and the Scottish Government in relation to same sex marriage are broadly similar, and officials have been working closely together to ensure consistency.

**Background:**

4. The **UK Government** is ahead of Scotland given that the Marriage (Same Sex Couples) Act 2013 received Royal Assent on 17 July 2013 and came into force on 13 March 2014. The first same sex marriages in England and Wales took place on 29 March 2014. The UK Government is progressing commencement of other provisions in the Act throughout the year, including transgender provisions towards the end of 2014.
5. The Act allows same sex couples to get married in both civil and religious ceremonies in **England and Wales** (where a religious institution has formally consented). It will also allow couples who have previously entered into civil partnerships to change their relationship into a same sex marriage and individuals to change their legal gender without having to end their marriage.
6. Under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, civil partnerships have been available to same sex couples in the **Republic of Ireland** since 1 January 2011. There has been growing discussion recently on the legal recognition of same-sex marriage. This would require an amendment to the Irish Constitution, which is planned to be held in 2015 and which, according to polls, is supported by about 75% of the Irish people.
7. Whilst same sex civil partnerships have been available in **Northern Ireland** since 2005, in April 2014, the Northern Ireland Assembly rejected for the third time a motion calling for the introduction of same-sex marriage. Northern Ireland is now the only part of the UK which has not passed a law to introduce same-sex marriage. Sinn Féin are in favour of same sex marriage, considering it an equality issue, and are supported by the Social Democratic and Labour Party which supports the freedom of religion. Unionist parties consider this a redefinition of marriage and are opposed to the introduction of any such legislation.
8. Same sex marriages are not available on the **Isle of Man, Jersey or Guernsey**.

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9. In addition, civil partnerships are not available on Guernsey, however, following the lowering the age of homosexual consent to 16 on **Guernsey** in March 2010, there have been calls to reform laws and introduce equal marriage in line with England and Wales. Guernsey's Chief Minister, Jonathan Le Tocq, agreed to meet in May 2014 with Liberate, an LGBT group campaigning to introduce same sex marriage, to discuss the legal recognition of same sex relationships.
10. Civil partnerships have been available on the **Isle of Man** since 6 April 2011. Homosexuality was illegal on the Isle of Man until 1992 and the age of consent was only equalised in 2006.
11. Since 2 April 2012, civil partnerships have been available to same sex couples on **Jersey**.

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## **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.

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