

**ANNEX B: EMAIL EXCHANGES ON CHANGING NON-SCOTTISH CPs TO MARRIAGES IN SCOTLAND**

[REDACTED]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

**From:** [Redacted]  
**Sent:** 19 November 2013 12:46  
**To:** [Redacted]  
**Cc:** [Redacted]  
Marshall J (Jan); [Redacted]  
**Subject:** Marriage and Civil Partnership (Scotland) Bill; Stage 1 report

[Redacted]

Many thanks for taking the time to set out the issues and for all of your efforts in trying to devise a workable policy which takes account of the arrangements within the various jurisdictions.

In our view, that phrase, “workable policy”, is the key phrase. As we have mentioned previously our primary concern is that which is highlighted in the second bullet point in paragraph 2 below. You are entirely right that the Scottish Parliament can legislate in respect of marriage in Scotland. However, as you also say, the Parliament cannot direct that a non-Scottish civil partnership (“NSCP”) is ended upon marriage. We do not believe the Parliament could say that the NSCP has ended under Scots law. Leaving aside the issue of competence, the “own jurisdiction solution” is likely to create, rather than prevent, legal wrangles. For example, declarations as to marital status etc would have to be similarly limited. Also, we could have the bizarre situation of one party filing for divorce in Scotland whilst the other party applies to end the civil partnership here. In such circumstances the normal rules about which court is seised would not apply because the proceedings would relate to two quite separate issues. Moreover, the Scottish Court couldn’t direct that the Northern Irish Court is best placed to deal with the matter because, in Scottish law, the civil partnership would no longer exist! I’m sure there are many other pitfalls in relation to inheritance or pension provision, but I haven’t begun to turn my mind to those.

As [REDACTED] has noted, the requirement for a CONI wouldn’t address that fundamental status issue. Moreover, the authority to provide a CONI would have to be provided for in Northern Ireland legislation (again, we don’t think the Scottish Parliament could deal with that issue) and is unlikely to be pursued.

Pushing the discussions into the proposed review wouldn’t resolve the issues either. So, we think it’s best all round to go back to the Committee and reiterate the legal complexities. Perhaps the Committee can be persuaded by the argument that it would be unfair to expose a couple to legal wrangles and uncertainties?

Regards

[REDACTED]

[REDACTED]

Thank you for copying me in. We have not yet thought it through fully, but I think it would be fair to say that a Certificate of No Impediment (while showing respect as you say to other jurisdictions) is unlikely to get round the very real practical difficulties to which I know you have already drawn the Committee’s attention – and I cannot imagine such a certificate being readily granted given that other jurisdictions would spot the likely practical difficulties too, if the legal relationship they have formed subsists after the Scottish marriage. You would also have to be sure that a mechanism existed to obtain such a certificate – presumably the couple would have to obtain it themselves directly from the relevant authorities?

I will get back to you more fully as soon as I can.

[REDACTED]  
Marriage (Same Sex Couples) Bill Team

GEO

DCMS

0207 211 6343  
[REDACTED]

**From:** [REDACTED]  
**Sent:** 19 November 2013 08:39  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
[REDACTED]  
[Jan.Marshall@scotland.gsi.gov.uk](mailto:Jan.Marshall@scotland.gsi.gov.uk); [REDACTED]  
[REDACTED]  
**Subject:** RE: Marriage and Civil Partnership (Scotland) Bill; Stage 1 report

[REDACTED]  
1. Many thanks.

2. We do consider that there are policy reasons for **not** changing non-Scottish civil partnerships to marriages in Scotland. These reasons include:

- Respect for other jurisdictions who do not want their CP changed in that way.
- Risk of the couple having two civil statuses. (David Ware has helpfully drawn our attention to written evidence to the House of Commons when the UK Bill was going through which shows problems which can arise when a couple have two civil statuses:  
<http://www.publications.parliament.uk/pa/cm201213/cmpublic/marriage/memo/m18.htm>  
)
- Limits to what we can say in legislation on whether the non-Scottish CP has ended. (We might, perhaps, be able to say it has ended under Scots law. But we could certainly not

make any provision on what other jurisdictions, including the home jurisdiction, might provide).

- The couple may not be recognised as married in their home jurisdiction (and, depending on the other jurisdiction's legislation, might even be seen as committing bigamy in the home jurisdiction).

3. The Scottish Bill has two ways in which Scottish CPs can change their relationship to a marriage. They can get married through a ceremony (section 7 of the Bill) or they can change through an administrative route (section 8). If we allowed non-Scottish CPs to change their CP to a marriage in Scotland, it would have to be through the ceremonial route. For practical reasons, we do not consider we could change non-Scottish CPs to marriages through the administrative route (eg we do not hold the CP paperwork). Our key LGBT stakeholder (the Equality Network) accepts this and, indeed, they have made this point themselves.

4. As outlined above, there are policy reasons why allowing persons in a non-Scottish civil partnership to get married may not be a good idea. However, we do consider it would be within the legislative competence for an Act of the Scottish Parliament to make provision as to who can get married here. We accept that it would not be within legislative competence to make provision on how such a marriage would be treated by the original jurisdiction where the couple entered the CP.

5. One **potential** option, to show respect for other jurisdictions, might be to provide that non-Scottish CPs could only marry here if they could provide a Certificate of No Impediment (CONI) from the jurisdiction which carried out the CP. However, we do not think we would be required to do that – it is just one potential policy option. Do you think requiring a CONI from the original jurisdiction would be a practical way of dealing with your concerns?

6. Another possible policy option would be for us to advise the Committee that we would consider issues in relation to non-Scottish CPs seeking to marry here in our forthcoming review of civil partnerships. It is not clear, though, if that would be enough to satisfy the Committee and head off any potential amendments at Stage 2 of the Bill. It may not be.

7. [REDACTED] will wish to note that **if** we allowed non-Scottish CPs to get married in Scotland, they could then apply to the Gender Recognition Panel (and, with spousal consent, obtain a full GRC).

8. I fully recognise that this is a challenging area. Given what our Committee have said, we need to respond. Any further thoughts **very** welcome.

[REDACTED]  
Scottish Government: Family and Property Law

0131 244 3322

**From:** [REDACTED]  
**Sent:** 11 November 2013 09:36  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
Marshall J (Jan); [REDACTED]  
**Subject:** Marriage and Civil Partnership (Scotland) Bill; Stage 1 report

Good morning [REDACTED].

We haven't had a chance to read the report, but we wanted to provide a quick comment on the conversion of non-Scottish civil partnerships. Under the devolution settlement the Scottish Parliament has the power to determine the law relating to marriage in Scotland. However, it does not have the power to "convert" (i.e. change the status of) civil partnerships which are contracted in Northern Ireland. So, if the Bill were to be amended as proposed, we think the Parliament would be acting beyond its legislative competence. However, we're happy to have a chat when you have had a chance to discuss the issues with your colleagues.

Best wishes

[REDACTED]

**From:** [REDACTED]  
**Sent:** 11 November 2013 08:18  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
[REDACTED]  
[REDACTED] [Jan.Marshall@scotland.gsi.gov.uk](mailto:Jan.Marshall@scotland.gsi.gov.uk);  
[REDACTED]  
**Subject:** Marriage and Civil Partnership (Scotland) Bill; Stage 1 report

[REDACTED]

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[REDACTED]

Thanks.

Our last stage (stage 3) is now scheduled for 30 January.

[Redacted]

0131 244 3322

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**From:** [Redacted]  
**Sent:** 07 January 2014 15:15  
**To:** [Redacted]  
**Subject:** Restricted: Policy: Marriage and Civil Partnership (Scotland) Bill

[Redacted]

The attached letter has just issued from our Minister. As you might expect , it reiterates NI's preferred position (i.e. NSCPs excluded from the conversion regime).

I see Day 2 of Stage 2 is set for 16 January and that Stage 2 is to be wrapped up by 24 January.

Grateful for the latest estimate on when the Bill will complete its passage.

Best wishes

[Redacted]

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This email has been received from an external party and  
has been swept for the presence of computer viruses.

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**Excerpt from Scottish Government document January 2015 – excerpt below is an e-mail by Northern Ireland Administration**

“I don't think it is enough to say that the law on marriage is devolved in Scotland, because the answer will be "we are not talking about marriage law, we are talking about the power of one devolved administration to direct that relationships contracted in another devolved administration shall have a different status.”

“There is of course the added difficulty that, under the law of each of the constituent jurisdictions of the UK, civil partnerships which are contracted in the other jurisdictions are recognised. That has not been set aside, so the courts in Scotland will be under a duty to recognise the NI civil partnership at the same time that they are under a duty to treat the civil partnership as a same sex marriage (if the section 9 power is exercised and "conversions" are allowed to take place). So, it is not just a question of dual status in different jurisdictions but dual status under the law of Scotland”.

**MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014  
CHANGING CIVIL PARTNERSHIPS REGISTERED OUTWITH SCOTLAND INTO  
MARRIAGE IN SCOTLAND  
THE DRAFT QUALIFYING CIVIL PARTNERSHIP (MODIFICATION) (SCOTLAND) ORDER  
2015**

**A consultation**

**Introduction**

1. This consultation, in line with section 9(3) of the 2014 Act, seeks comments on the draft Order. It also outlines key points raised by consultees who commented on the Scottish Government's Discussion Paper and contains the response by the Government on these points.

**Terminology**

2. This consultation refers throughout to "civil partnerships". In countries outwith the UK, the equivalent of civil partnerships are often called something else such as registered partnerships or civil unions. However, the Civil Partnership Act 2004 ("the 2004 Act") makes provision so that overseas same sex relationships are treated as civil partnerships in Scotland, so long as certain criteria are met (more details on this are at [paragraphs 7 to 10](#) below). Therefore, for simplicity, this consultation refers to "civil partnerships" even though other countries may use different terminology.

**The draft Order**

3. The draft Order is at Annex B.

4. The draft Order:

- Extends the definition of "qualifying civil partnership" (on the civil partners which can marry in Scotland) to cover civil partnerships registered in England and Wales and Northern Ireland (including those registered overseas through the UK consular service and the UK armed forces) and civil partnerships registered overseas.
- Modifies the Marriage (Scotland) Act 1977 ("the 1977 Act") so that persons in a civil partnership registered outwith Scotland seeking to marry do not have to provide an extract from the Scottish civil partnership register (which, clearly, they would not have). Instead, they would have to provide an equivalent. The draft Order also disapplies the need for a Certificate of No Impediment if the home jurisdiction will not issue such a certificate on the basis that they are already in a civil partnership (this specific issue was discussed in paragraphs 62 to 64 of the Discussion Paper).
- Makes provision so that persons in a civil partnership registered outwith Scotland can only use the ceremonial route to change their relationship into a marriage in Scotland and not the administrative route which is one option available to couples in a civil partnership registered in Scotland. The rationale for this approach is outlined in [paragraphs 11 to 16](#) below.
- Makes provision so that the couple are treated as having been married to each other since 5 December 2005 or when their civil partnership was registered. This provision reflects points made by respondents to the Discussion Paper, as outlined below. The inclusion of the 5 December 2005 date reflects that this is when Scotland started to provide legal recognition of same sex relationships.

**Question 1. Do you have any comments on the draft Order? If so, what are your comments?**

**No obligation**

5. The Scottish Government has already made it clear that there is no obligation on persons in an existing civil partnership to change their relationship into marriage if they do not wish to do so. That remains the position.

**Key points raised by consultees on the Discussion Paper, and the Government response**

6. Key points raised by consultees on the Discussion Paper, and the Government response, are outlined in the table below:

No.	Point made	Government response
1	Guidance will be needed for registrars	The Government agrees.  The Government will work closely with the Registrar General and registrars on the provision of suitable guidance.
2.	Guidance will be needed for couples who are considering changing their civil partnerships registered outwith Scotland into marriages in Scotland.	The Government agrees.  The issue is discussed further in paragraphs 21 to 23 and a draft of potential Government guidance is at Annex D.
3.	There should be more research on the proposals.	Paragraphs 24 to 40 outline relevant points.
4.	There are a number of issues in relation to ending the original civil partnership, and any subsequent divorce.	Paragraph 41 of this consultation outline relevant points.
5.	There are no guarantees about the recognition of a marriage formed in Scotland by parties to a civil partnership registered outwith Scotland.	Paragraph 42 of this consultation outlines relevant points.
6.	The marriage should be treated in Scotland as having started when the original civil partnership was registered.	Having considered the points raised by consultees, the Government has now decided that provision along these lines should be made in the draft Order. There is more discussion in paragraphs 43 to 45 of this consultation.
7.	There should be a “connecting factor” such as a residence requirement in Scotland before couples can change their civil partnership registered outwith Scotland to a marriage in Scotland.	The Government has considered this point fully and can understand why it has been made. However, the Government has decided not to follow the suggestion and, as a result, there is no provision of this nature in the draft Order. There is more discussion in paragraphs 46 and 47.

## **Eligibility of civil partners in a civil partnership registered outwith Scotland to change their relationship into a marriage in Scotland.**

### Civil partnerships from elsewhere in the United Kingdom

7. Civil partnerships were established across the UK by the Civil Partnership Act 2004. The draft Order makes provision so that couples in civil partnerships registered in England and Wales and Northern Ireland, including where the civil partnership was registered through the UK consular service or the UK armed forces, would be eligible to change their relationship into marriage in Scotland.

### Civil partnerships from outwith the United Kingdom

8. The draft Order makes provision so that couples in a relationship from outwith the United Kingdom which is treated as a civil partnership in Scotland may change their relationship to a marriage in Scotland. (Couples in an overseas same sex marriage are now recognised as being married in Scotland).

9. Chapter 2 of Part 5 of the 2004 Act makes provision on overseas relationships being treated as civil partnerships in the United Kingdom and Scotland. To be treated in this way, civil partnerships must be:

- Either a specified relationship or a relationship which meets general conditions.
- Registered with a responsible authority outwith the United Kingdom.
- Formed by two people of the same sex.
- Formed by two people who are neither married nor already in a civil partnership.

10. Under the 2004 Act, “a specified relationship” is a relationship listed in Schedule 20 to the Act, as amended. The current list is at Annex C. It is also possible for a relationship from outwith the UK to be treated as a civil partnership in Scotland if general conditions are met. The general conditions, contained in section 214 of the 2004 Act, are that under the law of the other jurisdiction:

- The relationship may not be entered into if either of the parties is already a party to a relationship of that kind or is lawfully married.
- The relationship is of indeterminate duration.
- The relationship is not one of marriage.
- The effect of entering into it is that the parties are treated as a couple either generally or for specified purposes but are not treated as married.

### Marriage ceremonies

11. The draft Order makes provision so that couples in a civil partnership registered outwith Scotland can change their civil partnership to a marriage in Scotland through having a marriage ceremony. The administrative route will not be available to such couples.

12. The administrative route is designed to be a straightforward way of allowing couples already in a civil partnership registered in Scotland to change their relationship to marriage here. The registrar will already have undertaken checks when the couple first entered their civil partnership here (and eligibility to enter a civil partnership in Scotland and enter a same sex marriage in Scotland are on the same lines).

13. The registrar can check the details of the civil partnership registered in Scotland on their national IT system.

14. The registrar will need to check with a civil partnership registered outwith Scotland that there are no other barriers to marriage (eg too closely related). This could take some time and so following usual marriage notice procedures and periods seems sensible.

15. Marriage ceremonies for a couple changing a civil partnership registered outwith Scotland into a marriage will be along the same lines as the procedure set out in the 1977 Act for changing a civil partnership into a marriage by way of a ceremony. Therefore:

- Notice of intention to marry would be given.
- The usual marriage notice period would apply. (This increased earlier this year to 28 clear days).
- Other barriers to marriage (eg too closely related) would continue to apply.
- The usual fees would apply<sup>1</sup>.
- The marriage could be civil or religious or belief (provided the relevant religious or belief body has opted into the solemnisation of same sex marriage).

16. More details on getting married in Scotland are on National Records for Scotland's website<sup>2</sup>.

#### Planned changes to the M10 (Marriage Notice) form

17. Paragraph 17 of the Discussion Paper noted that the M10 (Marriage Notice) form<sup>3</sup> may need to be amended to reflect that couples in a civil partnership registered outwith Scotland will be allowed to marry in Scotland. The Government and National Records for Scotland intend to make the changes outlined below to the M10 (Marriage Notice) form. Some of these changes are for clarification generally, rather than as a direct consequence of couples in a civil partnership registered outwith Scotland being able to marry in Scotland.

18. Box 32 of the form needs to be changed to reflect that the couple may be in a civil partnership registered outwith Scotland. We intend that the left hand box be changed to read as follows:

“ IF YOU ARE IN AN EXISTING CIVIL PARTNERSHIP

Is the relevant extract from the Scottish Civil Partnership register (your Civil Partnership certificate) or your Civil Partnership certificate from outwith Scotland enclosed?”

The right hand box would then be changed to read as follows:

If you are unable to produce the extract from the Scottish Civil Partnership register relating to your Civil Partnership, or your Civil Partnership certificate from outwith Scotland, state the reason for not doing so. The registrar will require proof of the Civil Partnership.

<sup>1</sup> Information on marriage fees is at <http://www.nrscotland.gov.uk/files/registration/rm1b-new-fees-16-12-2014.pdf>

<sup>2</sup> Information on getting married in Scotland is at <http://www.nrscotland.gov.uk/files/registration/rm1b-new-fees-16-12-2014.pdf>

<sup>3</sup> The current version of the M10 (Marriage Notice) form is at <http://www.legislation.gov.uk/ssi/2014/306/schedule/4/made>

19. To improve clarity, we intend the words “if different from (b)” would be removed from boxes 14 (c) and (d) and 18 (c) and (d).

20. The current numbering in M10 is slightly awry as there is no box numbered 19. The revised form will correct the numbering.

### **Guidance for couples who are considering changing their civil partnerships registered outwith Scotland into marriages in Scotland.**

21. Many respondents to the Discussion Paper noted that guidance should be provided to couples who are considering changing their civil partnerships registered outwith Scotland into marriages in Scotland, given the uncertainties around the recognition of the marriage outwith Scotland.

22. The Government agrees that it should issue guidance. However, there will be limits on how much any guidance by central Government can say. The approach taken by jurisdictions outwith Scotland will vary and circumstances of individual couples will vary.

23. Taking account of these limitations, a draft of potential Government guidance is attached at Annex D. The Government intends to make this guidance available on relevant websites. In addition, registrars could draw couples’ attention to the guidance.

**Comment** It is not just uncertainties with regard to recognition, it is uncertainties as to the status within Scotland. Will the law be amended to provide that a converted CP is no longer required to be recognised in Scotland as a CP from the original jurisdiction? (i.e. section 11(2) of the 2014 Act does not address that point). Also, what consideration has been given to the terms of the Family Law Act 1986?

### **Question 2. Do you have any comments on the draft guidance for couples? If so, what are your comments?**

### **The effect outwith Scotland of changing civil partnerships registered outwith Scotland into marriages in Scotland**

#### General

24. The Scottish Government cannot provide definitive answers to this issue, for a number of reasons:

- Private international law is complex and this is particularly true in relation to family law.
- Recognition of same sex relationships across the world varies and is still not as established as recognition of opposite sex relationships.
- Jurisdictions across the world have taken different approaches in relation to changing civil partnerships into marriages.
- The position may change in a jurisdiction at any stage
- Other jurisdictions may not have a clear position.

**Comment** The difficulty is that the Order will make a complex area even more complex .

25. However, the Scottish Government has raised the issue with some other jurisdictions and has also carried out some research of its own.

#### Elsewhere in the United Kingdom

26. As indicated in paragraphs 66 – 68 of the Discussion Paper issued on 6 March, the UK Government has established arrangements so that couples in a civil partnership registered in England and Wales may, if they wish, convert their relationship to a marriage in England and Wales<sup>4</sup>.

<sup>4</sup> More details of the conversion arrangements in England and Wales are at <https://www.gov.uk/convert-civil-partnership>

27. The Scottish Government is, of course, unable to make legislation to end a civil partnership registered in England and Wales for the purposes of English/Welsh law. Therefore, the advantage for civil partners registered in England and Wales in converting their civil partnership into a marriage in England and Wales is their status would be clear. Their civil partnership would be ended and they would be married in England and Wales (and in Scotland).

28. The Northern Ireland Executive has no plans to introduce same sex marriage. Therefore, should a couple in a Northern Irish civil partnership change it into a marriage in Scotland, it would not be recognised as a marriage in Northern Ireland<sup>5</sup>.

### Outwith the United Kingdom

#### *The Netherlands*

29. Article 88 of Book 10 of the Dutch Civil Code<sup>6</sup> provides that “Where a registered partnership has been ended outside the Netherlands by mutual consent of the partners, the ending will be recognised in the Netherlands if the registered partnership has been ended validly according to the law of that other State.”

30. The Scottish Government’s understanding is that this means that:

- If the civil partnership is changed in Scotland according to Scots law into a marriage on the request of both partners, that decision is recognised in the Netherlands.
- The marriage would be treated in the Netherlands as having commenced when the partnership ends as a result of the change from partnership to marriage.
- Any subsequent divorce in Scotland would be recognised in the Netherlands.

#### *Republic of Ireland*

31. Section 5 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010<sup>7</sup> makes provision so that Irish Ministers may, by Order, declare that a class of legal relationship entered into by two parties of the same sex is entitled to be recognised as a civil partnership. As the Republic of Ireland has not established same sex marriage, the Scottish Government’s understanding is that a civil partnership which has changed into marriage in Scotland would continue to be treated as a civil partnership in Ireland and that any divorce of the marriage would be treated as ending the civil partnership.

32. There is a referendum in the Republic of Ireland on 22 May 2015 on same sex marriage.

#### *Germany*

33. There is no same sex marriage in Germany and the German Civil Code provides that only a man and a woman can marry one another. Germany does have an equivalent of civil partnerships but there is no certainty that a same sex marriage from Scotland would be recognised as a civil partnership in Germany.

<sup>5</sup> A debate pen 27 April 2015 in the Northern Ireland Assembly on marriage is at

<http://data.niassembly.gov.uk/HansardXml/plenary-27-04-2015.pdf>

<sup>6</sup> The Dutch Civil Code, in English, is at <http://www.dutchcivillaw.com/civilcodebook01010.htm>

<sup>7</sup> <http://www.irishstatutebook.ie/2010/en/act/pub/0024/sec0005.html#sec5>

**Comment** [redacted] This implies that the only barrier to recognition is the absence of same sex marriage. However, it should explain that there is an additional barrier, namely that the original civil partnership is still in existence.

**Comment** [redacted]: Surely Article 88 is essentially about giving jurisdiction to end a Dutch registered partnership, rather than a power to convert or change it and a duty to recognise any new status or subsequent divorce?

**Comment** [redacted] This again raises the question about status and how the receiving State is to regard the parties. If the original CP is not dissolved, a divorce in Scotland may not be treated as ending the civil partnership.

## *Austria*

34. There are no rules in Austria on how to deal with same sex marriages under foreign law.

### *Countries which have not established civil partnerships*

35. A number of countries have not established civil partnerships and, therefore, there are no civil partnerships registered in these countries which could change into a marriage in Scotland<sup>8</sup>.

### *Countries which have established civil partnerships but not same sex marriages*

36. Some countries have established civil partnerships but have not established same sex marriages. It is unlikely in these countries that a same sex marriage solemnised in Scotland would be recognised as a marriage.

### *Countries which have established same sex marriages but not civil partnerships*

37. Some countries have established same sex marriages but not civil partnerships. Therefore, there are no civil partnerships registered in these countries which could change into a marriage in Scotland. Same sex marriages from outwith Scotland are recognised as marriages in Scotland.

### *Other countries where civil partnerships are ended by marriage*

38. In some other jurisdictions, being in a civil partnership is not a barrier to marriage and a civil partnership is ended when one of the couple marries somebody else or the couple marry<sup>9</sup>.

### *Other countries which change civil partnerships from outwith their jurisdiction to marriages*

39. The Government is aware of at least two other jurisdictions which change civil partnerships from outwith their jurisdiction to marriages.

40. One is New Zealand<sup>10</sup>. The other is the Netherlands. **[DRAFTING NOTE: Check position in the Netherlands: <http://www.dutchcivillaw.com/legislation/dcctitle055aa.htm> Article 1.80g of the Dutch Civil Code refers].**

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<sup>8</sup> The EU provides information on the position across Member States:

[http://europa.eu/youreurope/citizens/family/couple/registered-partners/index\\_en.htm](http://europa.eu/youreurope/citizens/family/couple/registered-partners/index_en.htm)

<sup>9</sup> New York City, for example, advises that If “ either you or your Domestic Partner get married to each other or to another person, your Domestic Partnership is automatically terminated.”

[http://www.cityclerk.nyc.gov/html/marriage/domestic\\_partnership\\_reg.shtml](http://www.cityclerk.nyc.gov/html/marriage/domestic_partnership_reg.shtml) (last bullet). Similarly, the French Pacte civil de solidarité (Pacs) ends when one of the parties marries somebody else or they marry each other.

<sup>10</sup> The relevant New Zealand form is

[http://www.dia.govt.nz/Pubforms.nsf/URL/NoticeofIntendedMarriagechangefromCivilUnion\\_BDM59.pdf/\\$file/NoticeofIntendedMarriagechangefromCivilUnion\\_BDM59.pdf](http://www.dia.govt.nz/Pubforms.nsf/URL/NoticeofIntendedMarriagechangefromCivilUnion_BDM59.pdf/$file/NoticeofIntendedMarriagechangefromCivilUnion_BDM59.pdf) Couples may only change their overseas civil union to a marriage if the civil union is one of those recognised in New Zealand – refer to [Civil Unions \(Recognised Overseas Relationships\) Regulations 2005](#).

## Ending the civil partnership

41. There are a number of points the Government wishes to make on ending the civil partnership and on any subsequent divorce of the marriage:

- The draft Order at **Annex B** does not modify section 11(2)(a) of the 2014 Act. As a result, the civil partnerships from outwith Scotland will be ended under the law of Scotland when it changes into a marriage.
- As indicated in the Discussion Paper, the Government is considering if an Order should be made under the 2014 Act so that the dissolution outwith Scotland of a Scottish same sex marriage treated elsewhere as a civil partnership ends the marriage in Scotland. This issue is relevant generally for Scottish same sex marriages treated elsewhere as civil partnerships and then dissolved and not just where a civil partnership has been changed into marriage in Scotland<sup>11</sup>.
- The 2014 Act made provision so that Scotland can be a divorce jurisdiction of last resort for same sex marriages entered into in Scotland (see paragraph 3(3) of Schedule 1B to the Domicile and Matrimonial Proceedings Act 1973, as added by schedule 1 to the 2014 Act). This provision would apply, if necessary, to same sex marriages entered into in Scotland by parties to a civil partnership registered outwith Scotland.

**Comment** See comment 1 above.

**Comment** It should be explained that this provision will not resolve the difficulties with regard to status where a marriage is "superimposed" on an existing CP (i.e. the original jurisdiction will still regard the couple as civil partners and will be unable to recognise the "divorce").

## Recognition of a marriage formed in Scotland by parties to a civil partnership registered outwith Scotland.

42. The Government appreciates that there are no guarantees on how such a marriage will be recognised outwith Scotland. However, there are three points the Government would make:

- To an extent, that is true of same sex relationships generally. When a same sex couple marry in Scotland, there is no guarantee whether the relationship will be recognised in other jurisdictions. It may be recognised as a marriage or as a civil union or it may not be recognised at all. However, the Government does not consider that, as a result, Scotland should take no action on the recognition of same sex relationships. The Scottish Government will continue to argue for the maximum possible legal recognition across the world of same sex relationships. It is, of course, a matter for each country to decide what, if any, recognition they will give to same sex relationships.
- As indicated elsewhere, the Government intends, as suggested by consultees, to issue guidance to advise couples that there is this lack of certainty.
- Family law is becoming increasingly international as people move to different jurisdictions to, for example, work. This suggests that provision allowing persons in a civil partnership registered outwith Scotland to change that relationship to a marriage in Scotland is recognition of growing mobility.

**Comment** As mentioned above, it cannot be recognised in Northern Ireland because the original CP is still in place. That point should be explained.

<sup>11</sup> Provision has already been made in Article 7 of the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (SI 2014/3229) <http://www.legislation.gov.uk/uksi/2014/3229/article/7/made> on the recognition of the dissolution of a Scottish same marriage deemed to be a civil partnership in Northern Ireland.

## Backdating

43. In the light of the responses to the Discussion Paper, the Government has concluded that, for the purposes of Scots law, civil partners who change their civil partnership registered outwith Scotland to marriages should be treated as married from the date they originally entered their civil partnership or from 5 December 2005, whichever is the later. (This is referred to in this consultation as “backdating”). The reason for the reference to 5 December 2005 is that is when civil partnerships were first introduced in Scotland/the UK. There was no legal recognition of same sex relationships in Scotland/the UK before then.

44. The Government has concluded that we should backdate, for the following reasons:

- This will ensure that property acquired during the civil partnership is treated as “matrimonial property” in any subsequent divorce<sup>12</sup>.
- It treats, insofar as we are able to do so, non-Scottish civil partnerships in the same way as Scottish civil partnerships.
- On reflection, the argument about not backdating for the purposes of Scots law those overseas civil partnerships which provide only limited rights and responsibilities is not strong. The fact remains that we treat such relationships as civil partnerships in Scotland

**Comment** [redacted]: Couples should be advised of the danger of simultaneous proceedings in separate jurisdictions.

45. In terms of adding a note to the marriage register page, the Government proposes the following note could be added at the bottom, in the space for notes.

“This marriage was formed by two persons originally in a legal relationship registered outside Scotland. The couple are treated as married in Scotland from the date on which they registered that original legal relationship or from 5 December 2005, whichever is the later.”

**Question 3. Do you have any comments on backdating? If so what are your comments?**

## Residency/connecting factor requirement

46. Some consultees suggested that a “connecting factor” (eg of Scottish domicile or one year’s habitual residence) should be required, to limit the complexities in relation to recognition outwith Scotland. The courts have jurisdictional periods of this nature, in line with principles of international comity. There is an argument that the absence of a connecting factor could exacerbate the problems of international recognition of a Scottish marriage resulting from a change from a civil partnership registered outwith Scotland.

47. The Government recognises the strength of these arguments. On balance, though, the Government has not added provisions of this nature to the draft Order, for the following reasons:

- Any residence period chosen would be arbitrary.
- It would be very difficult for registrars to establish the validity of a connecting factor.
- If a couple married (and possibly married in good faith) and it turned out subsequently that they had not met the connecting factor requirement, it’s not clear what would happen to the marriage.

<sup>12</sup> When a couple divorce in Scotland, property acquired for or during the marriage is regarded as “matrimonial property”. Provision is then made on how the court should apportion the “matrimonial property”.

- A connecting factor would not be in line with Scots registration practice as we have no marriage residence requirements at the moment.
- A connecting factor would introduce a differentiation between couples in a civil partnership registered outwith Scotland and couples in a civil partnership registered in Scotland. This goes against the general approach of treating people in the same way, wherever possible.

**Question 4. Do you have any comments on a connecting factor requirement? If so what are your comments?**

**Gender recognition**

48. The Gender Recognition Act 2004 (“the GRA”) allows transgender people to apply to the Gender Recognition Panel (“the GRP”) to change their legal gender. If successful, they acquire a full Gender Recognition Certificate (“GRC”), which affords them full recognition of their acquired gender for all purposes, including marriage.

49. The 2014 Act removes the requirement on married applicants to divorce first before applying for a full GRC.

50. When the Order is made to allow civil partnerships registered outwith Scotland to change into marriage in Scotland, the Scottish Government considers that a person who changes a civil partnership registered outwith Scotland into a marriage would be in a protected Scottish marriage for the purposes of the 2004 Act and, therefore, could apply, following the marriage, under section 1(1) of the 2004 Act to the GRP. The Scottish Government cannot say whether or not the GRC or the change into marriage will be recognised in the jurisdiction where the civil partnership was registered.

**Any other comments**

51. There may be other points consultees wish to make.

**Comment** [redacted] Has this point been discussed with MoJ/the GRC Panel? What will happen if a couple from Northern Ireland are in a CP, go to Scotland and convert their CP to a marriage and then return to Northern Ireland. Surely whilst here they are subject to the law of the jurisdiction and are not, therefore, in a “protected marriage”?

**Question 5. Do you have any other comments? If so, what other comments would you like to make?**

**Conclusion**

52. Please send any comments by 5PM on **Monday 6 July 2015** to:

[redacted]  
 Family and Property Law  
 Scottish Government  
 Room GW.15  
 St Andrew’s House  
 Regent Road  
 EDINBURGH  
 EH1 3DG  
 0131 244 3322

Email: [redacted]

For convenience, the questions in the consultation paper are:

**Question 1. Do you have any comments on the draft Order? If so, what are your comments?**

**Question 2. Do you have any comments on the draft guidance for couples? If so, what are your comments?**

**Question 3. Do you have any comments on backdating? If so what are your comments?**

**Question 4. Do you have any comments on a connecting factor requirement? If so what are your comments?**

**Question 5. Do you have any other comments? If so, what other comments would you like to make?**

**Family and Property Law  
Scottish Government  
June 2015**

## **ANNEX A: LIST OF CONSULTEES**

Association of Registrars of Scotland (and Registrars across Scotland)  
Convention of Scottish Local Authorities  
Department for Work and Pensions (UK)  
Equality Network  
Faculty of Advocates  
Family Law Association  
Gender Recognition Panel  
Government Equalities Office (UK)  
Home Office (UK)  
Humanist Society Scotland  
Law Society of Scotland  
LGBT Youth Scotland  
Ministry of Justice (UK)  
Muslim Council of Scotland  
National Records of Scotland  
Northern Ireland Executive  
Religious Society of Friends (Quakers)  
Scotland for Marriage  
Scottish Churches Parliamentary Office  
Scottish Council of Jewish Communities  
Scottish Transgender Alliance  
Scottish Unitarian Association  
Stonewall Scotland

**ANNEX B: DRAFT QUALIFYING CIVIL PARTNERSHIP (MODIFICATION) (SCOTLAND)  
ORDER 2015**

**[To be added]**

**ANNEX C: LIST OF SPECIFIED RELATIONSHIPS FROM OUTWITH THE UK TREATED AS CIVIL PARTNERSHIPS IN SCOTLAND BY VIRTUE OF SCHEDULE 20 TO THE 2004 ACT**

<b><i>Country or territory</i></b>	<b><i>Description</i></b>
Andorra	unió estable de parella
Argentina: Autonomous City of Buenos Aires	unión civil
Australia: Australian Capital Territory	civil partnership
Australia: New South Wales	a relationship registered under the Relationships Register Act 2010
Australia: Queensland	civil partnership
Australia: Tasmania	significant relationship
Australia: Victoria	registered domestic relationship
Austria	eingetragene Partnerschaft
Belgium	the relationship referred to as cohabitation légale, wettelijke samenwoning or gesetzliches zusammenwohnen
Brazil	união estável
Canada: Manitoba	the relationship referred to as common-law relationship or as union de fait
Canada: Nova Scotia	domestic partnership
Canada: Quebec	the relationship referred to as union civile or as civil union
Colombia	unión de hecho
Czech Republic	registrované partnersví
Denmark	registreret partnerskab
Ecuador	unión civil
Finland	the relationship referred to as rekisteröity parisuhde or as registrerad partnerskap
France	pacte civil de solidarité

Germany	Lebenspartnerschaft
Greenland	the relationship referred to as nalunaarsukkamik inooqatigiinneq or as registreret partnerskab
Hungary	bejegyzett élettársi kapcsolat
Iceland	staðfesta samvist
Ireland	civil partnership
Isle of Man	civil partnership
Jersey	civil partnership
Liechtenstein	eingetragene Partnerschaft
Luxembourg	the relationship referred to as partenariat enregistré or eingetragene Partnerschaft
Mexico: Coahuila	pacto civil de solidaridad
Mexico: Mexico City Federal District	sociedad de convivencia
Netherlands	geregistreerd partnerschap
New Zealand	civil union
Norway	registrert partnerskap
Slovenia	zakon o registraciji istospolne partnerske skupnosti
South Africa	civil partnership
Sweden	registrerat partnerskap
Switzerland	the relationship referred to as eingetragene Partnerschaft, as partenariat enregistré or as unione domestica registrata
United States of America: California	domestic partnership
United States of America: Colorado	the relationship between designated beneficiaries
United States of America: Connecticut	civil union
United States of America: Delaware	civil union

United States of America: Hawaii	civil union
United States of America: Hawaii	reciprocal beneficiary relationship
United States of America: Illinois	civil union
United States of America: Maine	domestic partnership
United States of America: Nevada	domestic partnership
United States of America: New Jersey	civil union
United States of America: New Jersey	domestic partnership
United States of America: Oregon	domestic partnership
United States of America: Rhode Island	civil union
United States of America: Vermont	civil union
United States of America: Washington	state registered domestic partnership
United States of America: Wisconsin	domestic partnership
Uruguay	unión concubinaria

It is also possible for an overseas relationship to be treated as a civil partnership in Scotland by meeting the general conditions laid down in the 2004 Act.

## ANNEX D: DRAFT GUIDANCE TO COUPLES

### CHANGING CIVIL PARTNERSHIPS REGISTERED OUTSIDE SCOTLAND TO MARRIAGES

#### Introduction

It is possible in Scotland to change a civil partnership registered outside of Scotland into a marriage in Scotland.

This guidance note outlines eligibility and the procedures to follow. It also suggests that couples considering taking this step should obtain their own independent legal advice on how the marriage formed in Scotland would be treated outside Scotland.

**The Scottish Government, National Records of Scotland and Scottish local authority registrars cannot provide any advice to couples on how the marriage would be treated outside Scotland.**

#### Eligibility

To change a civil partnership registered outside of Scotland into a marriage here, the relationship must be treated as a civil partnership in Scotland.

Civil partnerships registered in England and Wales and Northern Ireland are also civil partnerships in Scotland.

In relation to relationships registered outside of the United Kingdom, the relationship must be:

- Either a specified relationship or a relationship which meets general conditions.
- Registered by a responsible authority outwith the United Kingdom.
- Formed by two people of the same sex.
- Formed by two people who are neither married nor already in a civil partnership.

A “specified relationship” is one where specific provision has been laid down in legislation so that it is treated as a civil partnership in the United Kingdom, including Scotland.

To change a civil partnership registered outside of Scotland into a marriage here, couples need to go through a marriage ceremony. Therefore:

- Notice of intention to marry must be given.
- A marriage notice period applies. (This is now a minimum 28 clear days).
- Barriers to marriage (eg too closely related) apply.
- Fees apply.
- The marriage ceremony may be civil or religious or belief (provided the relevant religious or belief body has opted into the solemnisation of same sex marriage).

The local authority registrar can provide further details of the requirements in relation to the ceremony.

### No obligation

There is no obligation on couples to change their civil partnership into a marriage. It is entirely a decision for couples themselves.

### The effect of changing a civil partnership registered outside Scotland into a marriage in Scotland

Your marriage will be recognised as a marriage in Scotland. The Scottish legislation ends your civil partnership for the purposes of the law of Scotland and treats you as married from 5 December 2005 or the date your civil partnership was registered, whichever is the later. The reason for the reference to 5 December 2005 is that is when same sex relationships were first given legal recognition in Scotland.

There is no guarantee on how your marriage will be treated in your home country or in any other country. Therefore, you may wish to obtain your own independent legal advice on the effect in your home country or any other country of changing a civil partnership registered outside Scotland into a marriage in Scotland. In particular, you may wish to check whether any uncertainty on your civil status might require you to go to court to seek clarity on your status. This could be expensive.

Other points you may wish to consider include:

- Your home country or any other country may still regard you as being in a civil partnership.
- If you should subsequently divorce or dissolve your relationship, there may be uncertainty as to whether this divorce or dissolution would be recognised across the world. This could stop you from subsequently re-marrying, or entering a new civil partnership.

**Comment** [REDACTED] As the position in Northern Ireland is already known, it should be clearly stated.

## **THE SCOTTISH GOVERNMENT 2015**



T: 0131-244 3322

E: [REDACTED]

[REDACTED]  
Department of Finance and Personnel for Northern Ireland

**By email**



1 July 2015

Dear [REDACTED]

## **CHANGING CIVIL PARTNERSHIPS REGISTERED OUTWITH SCOTLAND INTO MARRIAGE IN SCOTLAND**

### Introduction

1. Thank you for your email of 21 May, commenting on the draft consultation paper, and your further email of 10 June. As you know, the consultation on the draft Order issued on 8 June and comments are requested by 5PM on Monday 6 July 2015. This letter responds to a number of the points you made.

### Comments LM1 and LM6 (on draft consultation – your email of 21 May refers)

2. Our view on the first question you have raised is that once the civil partnership has changed into a marriage, the relationship will no longer be treated as a civil partnership in Scotland. We covered this in paragraph 19 of the note at Annex B of the consultation we issued on 8 June.

3. You also asked what consideration has been given to the terms of the Family Law Act 1986. What specific issue in relation to the 1986 Act are you concerned about here? Part II of the 1986 Act contains provision on mutual recognition of divorces across the UK and on recognition of overseas divorces.

4. On overseas divorces, Scotland would, in line with the 1986 Act, treat the divorce overseas of a same sex marriage solemnised in Scotland as a divorce. As the second bullet in paragraph 39 of the consultation on 8 June indicates, we are considering if provision is needed so that the dissolution elsewhere of a Scottish same sex marriage treated elsewhere as a civil partnership would end the marriage in Scotland.

5. As footnote 13 of the consultation indicates, provision has already been made in Article 7 of the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (SI 2014/3229)

<http://www.legislation.gov.uk/ukxi/2014/3229/article/7/made> on the recognition of the dissolution of a Scottish same marriage deemed to be a civil partnership in Northern Ireland. I discuss some possible issues arising with this Order in paragraphs 10 to 14 below.

#### Email of 10 June

6. You asked in your email of 10 June if we had discussed with England and Wales how they will recognise a Northern Ireland civil partnership changed into marriage. My colleague Sandra Jack and I met with UK Government colleagues on 16 June and asked them about this. UK Government colleagues advised that they were still considering this issue.

7. You also asked in your email of 10 June if we had discussed with the Republic of Ireland how they will recognise a Northern Ireland civil partnership changed into marriage. We have not asked that specific question of ROI colleagues. However, I attach, as an Annex to this letter, an email we received from the ROI when we made inquiries through the EU net. This email pre-dated the recent referendum.

#### Comment LM2 (on draft consultation – your email of 21 May refers)

8. Noted.

9. The one comment I would make is the more we have researched (both for this Order and for our review of civil partnerships in Scotland), the more we have noticed the lack of consistency generally on how registered same sex relationships are treated across the world. In many jurisdictions, same sex relationships (recognised as civil partnerships in the United Kingdom) provide markedly lower rights than marriage (eg France). And in many jurisdictions (eg France and New York), being in a registered same sex relationship is not a bar to marriage. It seems to me, therefore, that policy internationally on same sex relationships is still evolving.

#### Comments LM3, LM8 and LM11 (on draft consultation – your email of 21 May refers)

10. This point raises an issue about the effect of what we are doing in relation to the law of Northern Ireland under 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).

11. SI 2014/3229 was made by UK Ministers and, as you know, the Scottish Ministers cannot make provision for the law of Northern Ireland. Article 6 provides that a Scottish same sex marriage is to be treated as a civil partnership registered in Scotland under the law of Northern Ireland. A civil partnership registered outwith Scotland (including one registered in Northern Ireland) which changes to a Scottish marriage through the Order will be a Scottish marriage under article 6(2). It is therefore potentially recognised as a civil partnership registered in in Scotland even though it was registered in Northern Ireland.

12. This raises the issue of whether SI 2014/3229 requires to 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. Clearly, policy would remain that any dissolution of their relationship as a civil partnership would be treated as ending the marriage in Scotland, as provided for in article 7 of SI 2014/3229.

13. In practice, it may make little difference to how the couple are actually treated in Northern Ireland but Article 6 may go further than originally intended once we make our Order.

14. I am also raising this with the UK Government (and mentioned it at the meeting on 16 June with them).

Comments LM4 (on draft consultation – your email of 21 May refers)

15. The consultation here is based on what the Dutch said to us when we sent the query round the EU net.

16. The Dutch said “the Netherlands will recognize a change from a registered partnership into a marriage and also recognize a divorce decision from abroad (if the requirements as mentioned before are met)” and referred to 10.88 of the Dutch Civil Code.

Comments LM5 and LM7 (on draft consultation – your email of 21 May refers)

17. We accept (and propose to warn couples in the draft guidance at Annex D of the consultation) that a divorce of a same sex marriage here may not necessarily end the original civil partnership from the other jurisdiction: this depends on the approach by the other (or third) jurisdiction.

Comment LM9 (on draft consultation – your email of 21 May refers)

18. I have added a reference to the possibility of simultaneous divorce/dissolution proceedings at the very end of the draft guidance at Annex D of the consultation.

Comment LM10 (on draft consultation – your email of 21 May refers)

19. I will write separately to the Gender Recognition Panel Secretariat and copy you in.

Conclusion

20. I am happy to meet/discuss.

Yours sincerely

[Redacted signature]

## **ANNEX: EMAIL FROM THE REPUBLIC OF IRELAND**

**Question: If Scotland allows civil partners who registered their civil partnership in your country to change their civil partnership to marriage in Scotland, how would the relationship be treated in your country? Would the couple be treated as married?**

Reply: No they would not be treated as married.

Section 5 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 provides that the Irish Minister of Justice and Equality may, by order, declare that a class of legal relationship entered into by two parties of the same sex is entitled to be recognised only as a civil partnership. Such recognition is possible if under the law of the jurisdiction in which the legal relationship was entered into—

- (a) the relationship is exclusive in nature,
- (b) the relationship is permanent unless the parties dissolve it through the courts,
- (c) the relationship has been registered under the law of that jurisdiction, and
- (d) the rights and obligations attendant on the relationship are, in the opinion of the Minister, sufficient to indicate that the relationship would be treated comparably to a civil partnership.

Ireland would, within a short time, prescribe marriages entered by a same sex couple in Scotland for the purposes of a further section 5 Order. Pending that Order, we would simply continue to recognise the pre-existing civil partnership under our law; post recognition it would be recognised as "entitled and obliged to receive the same treatment" etc. as civil partnership. In short, the couple would have continuity of legal recognition despite a rather complex private international law position.

N.B. If a proposed referendum here in Ireland proceeds and it becomes legal for same sex couples to marry, the landscape will change further: marriages from a range of jurisdictions will be recognised as marriages instead of being treated as civil partnerships.

**Question: If so, (i) what would the effect be on the civil partnership, (ii) from what date would the marriage be taken to have commenced, and (iii) if the relationship should subsequently end, would a divorce in Scotland be treated as ending the marriage?**

Reply: Not applicable, see previous reply above.

**If the couple would still be treated as being in a civil partnership in your country, would a divorce in Scotland be treated as ending the civil partnership?**

Reply: Yes, as per section 5 (1) (b) above.

[REDACTED]

---

**From:** [REDACTED] on behalf of Minister for Local Government and Community Empowerment  
**Sent:** 06 October 2015 14:43  
**To:** [REDACTED]  
**Cc:** zzzMinister for Local Government and Community Empowerment 2014 to 2016  
**Subject:** Response to Arlene Foster MLA - 2015/0031465

[REDACTED]

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]

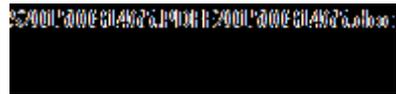
[REDACTED]

PS/Minister for Local Government and Community Empowerment – Marco Biagi MSP  
Scottish Government  
Tel: [REDACTED]  
Mob: [REDACTED]



**From:** [Redacted]  
**Sent:** 02 October 2015 10:31  
**To:** [Redacted]  
**Subject:** MACCS - Copy of case 2015/0031465 documents.

Please find the attached documents...



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



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**

Thank you for your letter of 4 September 2015.

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.

Victoria Quay, Edinburgh EH6 6QQ  
www.gov.scot



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 a matter for UK Ministers.

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**



Department of  
**Finance and  
Personnel**

www.dfpni.gov.uk

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

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

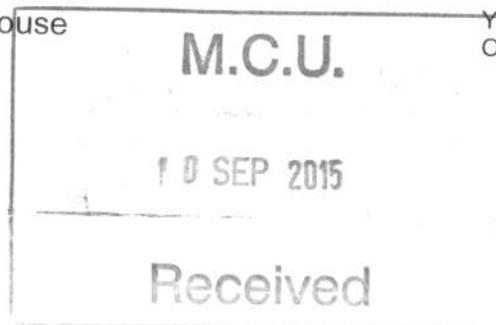
Telephone: 028 90816711

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, flowing style with a large initial 'A'.

**ARLENE FOSTER MLA**

[REDACTED]

---

**From:** MACCS <DONOTREPLY@maccs.scotland.gsi.gov.uk>  
**Sent:** 04 December 2015 15:16  
**To:** [REDACTED]  
**Subject:** MACCS: Case 2015/0031465 completed.  
**Attachments:** qA531860.obr

Ministerial and Corporate Correspondence System:

Case 20150031465 for which you provided the reply has now been issued. You can view the case by searching for it using the reference above.

eRDM file reference attached. (It may take up to 30 minutes before you can open this file due to eRDM replication.)

Please do not reply to this email.

Minister for Local Government and Community Empowerment  
Marco Biagi MSP

T: 0300 244 4000  
E: [scottish.ministers@gov.scot](mailto: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](mailto:private.office@dfpni.gov.uk)

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

November 2015

## **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.

St Andrew's House, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



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**



Department of  
**Finance and  
Personnel**

www.dfpni.gov.uk

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

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

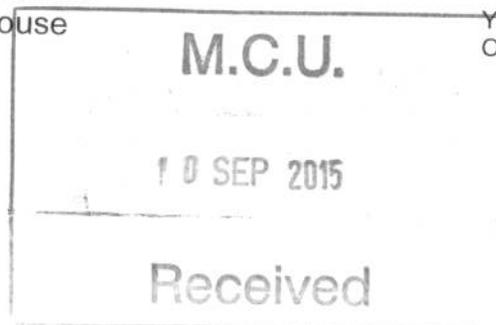
Telephone: 028 90816711

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, stylized initial 'A'.

**ARLENE FOSTER MLA**

Minister for Local Government and Community Empowerment  
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By email to: [private.office@dfpni.gov.uk](mailto: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.

St Andrew's House, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



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**