

Cabinet Secretary for Health and Wellbeing  
Alex Neil MSP

T: 0845 774 1741  
E: scottish.ministers@scotland.gsi.gov.uk



Simon Hamilton MLA  
Minister for Finance and Personnel  
Craigantlet Buildings  
Stoney Road  
Belfast  
BT4 3SX

private.office@dfpni.gov.uk

// December 2013

*Dear Simon*

I am writing concerning a proposed non-Government amendment to the Marriage and Civil Partnership (Scotland) Bill.

The Marriage and Civil Partnership (Scotland) Bill ("the Bill") was introduced to the Scottish Parliament on 26 June 2013. It proposes to allow same sex couples to get married in Scotland.

The Bill also proposes to allow persons who registered their civil partnership in Scotland to change their civil partnership to a marriage. There will be two routes available to couples to do this. Section 7 of the Bill allows persons in a Scottish civil partnership to change their civil partnership to a marriage by having a marriage ceremony within the terms of the Marriage (Scotland) Act 1977. Section 8 of the Bill allows Scottish Ministers to establish an administrative process so that persons in a civil partnership registered in Scotland may change their relationship to a marriage.

Stakeholders in Scotland have expressed concerns over the current provisions in the Bill to change a civil partnership to a marriage. They argue that it is unfair that the provisions exclude couples who have entered into a civil partnership outwith Scotland from being able to change their civil partnership to a marriage in Scotland. In order to get married in Scotland, such a couple would have to dissolve their civil partnership first, even though the relationship has not broken down. This could lead to practical problems in relation to succession and immigration.

The Equal Opportunities Committee, which leads on scrutiny of the Bill in the Scottish Parliament, has recommended in its Stage 1 Report that if same sex marriage is introduced in Scotland, those couples who have entered into a civil partnership outside of Scotland should have similar access to change their civil partnership to a marriage as those couples who registered their civil partnership in Scotland.

However we consider that extending the provisions to cover non-Scottish civil partners would be complex, not least because we appreciate that some overseas jurisdictions may not wish civil partnerships entered into their territory being changed to a marriage in a different jurisdiction.

In addition, a couple could end up with two different civil statuses and this could lead to legal uncertainties for them.

If the Bill were amended to allow persons in a non-Scottish civil partnership to change that relationship to a marriage by marrying in Scotland, we understand that we would not be able to make any provision on how the relationship would be regarded in the original jurisdiction. That would be a matter for the home jurisdiction.

Given these concerns, we do not think we can just agree to an amendment.

However, we do think that we should commit to consulting on the issue since we recognise the points raised about the difficulties a couple resident in Scotland might face if they are in a civil partnership registered outwith Scotland. We therefore plan to lodge a Government amendment to the Bill to give the Scottish Ministers a power to extend the right for civil partners to marriage in Scotland to those civil partners who registered their civil partnership without Scotland. The power will be subject to affirmative procedure and there will be a requirement to lay a report before the Scottish Parliament before making any Order. This requirement would apply even if we decide, after consultation, that an Order should not be made.

We will, of course, consult with you and your officials before we take any decision to make an Order in this area.

I am copying this letter to Alistair Carmichael MP, Secretary of State for Scotland; Maria Miller MP, Secretary of State for Culture, Media and Sport and Minister for Women and Equalities; and Shailesh Vara MP, Parliamentary Under-Secretary of State for Justice.



**ALEX NEIL**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[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]

\*\*\*\*\*

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

\*\*\*\*\*



**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**

Alex Neil MSP  
Cabinet Secretary for Health and Well-Being  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

Telephone: 028 90816711

Email: [private.office@dfpni.gov.uk](mailto:private.office@dfpni.gov.uk)

Your reference:

Our reference: COR/674/2013

7 January 2014

Dear *Alex*

Thank you for your letter of 11 December, which highlighted the proposed non-Government amendment to the Marriage and Civil Partnership (Scotland) Bill and set out how the Scottish Government would approach that amendment.

In my view, the call for the Bill to be amended to allow for the conversion of non-Scottish civil partnerships is ill-judged. As you have acknowledged, the Scottish Parliament cannot determine the status of the civil partnership within the original jurisdiction and couples will inevitably have a "dual status", with all the difficulties that would involve. For example, if the parties separate, one party may petition for a divorce in Scotland, while the other seeks to dissolve the civil partnership in the other jurisdiction. There may be perceived advantages for either party in doing so and the customary rules for resolving jurisdictional disputes would not apply because the subject matter of the proceedings would be different. Moreover, the courts in the original jurisdiction might not recognise the same sex marriage and would, therefore, be precluded from ceding jurisdiction. There may be other implications which have yet to be identified.

I am also concerned that an order-making power will raise expectations that the power will be exercised.

Ultimately I believe that the call to amend the Bill could be adequately met by competence arguments and, in the interests of legal clarity, I would rather that non-Scottish civil partnerships continued to be excluded from the conversion regime.

I am copying this letter to the Secretary of State for Northern Ireland and to your copy recipients.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Simon', written in a cursive style.

**SIMON HAMILTON MLA**



Reply to Northern Ireland

10. Simon Hamilton MLA, the Minister of Finance and Personnel in Northern Ireland, wrote to you on 3 March. His letter is attached. His points, and our comments, are in the table at Annex D.

11. A draft reply to Mr Hamilton is attached.



## ANNEX D: POINTS IN THE LETTER BY SIMON HAMILTON MLA

No.	Point made	Our response
1	The civil partnership will not be dissolved and the couple will, therefore, have a “dual status”.	<p>The Scottish legislation will provide that the civil partnership will end under Scots law.</p> <p>Some other jurisdictions (eg the Netherlands) may also recognise that the civil partnership has ended.</p> <p>However, Northern Ireland will clearly not recognise the marriage.</p>
2.	“Dual status” could lead to separate proceedings in separate jurisdictions.	<p>This appears to be a reference to the possibility of, for example, dissolution proceedings (for the original civil partnership) being raised in Northern Ireland and divorce proceedings being raised in Scotland (for the original marriage) at the same time.</p> <p>The section 104 Order made provision so that any dissolution of a marriage deemed to be a civil partnership in Northern Ireland is treated as a divorce elsewhere in the UK. However, that just relates to same sex marriages <u>treated</u> as civil partnerships in Northern Ireland: in this case, the dissolution would be of an <u>actual</u> civil partnership in Northern Ireland.</p> <p>We will explore further if an Order could be made under the 2014 Act so that all dissolutions outwith Scotland of a same sex marriage registered in Scotland are treated as ending the Scottish marriage.</p> <p>However, we could not make provision on how Northern Ireland would treat the Scottish divorce of a marriage in Scotland formed by civil partners in Northern Ireland: this would be for Northern Ireland.</p>
3.	If a couple change their civil partnership registered outwith Scotland to a marriage, the civil partnership will still subsist and the courts in Scotland could be faced with having to simultaneously	The <u>specific</u> point made by Mr Hamilton is reasonably straightforward. The Scottish legislation will provide that for the purposes of Scots law the civil partnership will end.



	recognise the marriage and the civil partnership.	However, it is not clear what would happen if the couple should move to, for example, England and Wales and whether they would be treated as being in their original civil partnership or in their marriage registered in Scotland.
3.	There could be particular problems with gender recognition as it's not clear whether the couple would be regarded as Scottish spouses or civil partners from Northern Ireland.	<p>We will discuss issues of this nature with the Gender Recognition Panel (GRP) Secretariat. (The GRP operates on a UK basis).</p> <p>Our view is that if a person applies to the GRP and can show that he or she is in a Scottish marriage, that should be how he or she is treated by the GRP. However, there is no guarantee how the person would be recognised outwith Scotland if he or she should obtain gender recognition.</p>
4.	Overseas jurisdictions may raise queries about the status of the couple.	We think the position will vary from jurisdiction to jurisdiction and may not be clear within a jurisdiction. As outlined elsewhere, we would propose to issue guidance on the uncertainties of recognition outwith Scotland.
5.	The uncertainty over the couple's status could also create difficulties for third parties who may have dealings with them.	It's not immediately clear what difficulties are envisaged by Mr Hamilton. However, as above, we will issue guidance.
6.	Please do not use the Order-making power or, if you must, please exclude Northern Ireland.	<p>We would find it very difficult to justify excluding Northern Ireland.</p> <p>However, we recognise that we cannot dictate how Northern Ireland, or any other jurisdiction, will recognise the marriage.</p>

**From:** [REDACTED] on behalf of Minister for Local Government and Community Empowerment  
**Sent:** 27 May 2015 17:25  
**To:** [REDACTED] Minister for Local Government and Community Empowerment  
**Cc:** Marshall J (Jan); [REDACTED] Coull AJ (Alison); [REDACTED]  
**Subject:** RE: Changing civil partnerships registered outwith Scotland into marriages

Hi [REDACTED]

A copy for your records.

Thanks



Changing non-Scottish civil partnerships to marriages\_ letter to Simon Hamilton MLA.docx

Kind Regards,

[REDACTED]  
 APS/Minister for Local Government and Community Empowerment – **Marco Biagi MSP**

[REDACTED] | [lqcemminister@scotland.gsi.gov.uk](mailto:lqcemminister@scotland.gsi.gov.uk) | [REDACTED]  
 The Scottish Government | Victoria Quay | Edinburgh | EH6 6QQ

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**From:** [REDACTED]  
**Sent:** 20 May 2015 16:27  
**To:** Minister for Local Government and Community Empowerment  
**Cc:** Marshall J (Jan); [REDACTED] Coull AJ (Alison); [REDACTED]  
**Subject:** RE: Changing civil partnerships registered outwith Scotland into marriages

<< File: Changing non-Scottish civil partnerships to marriages\_ letter to Simon Hamilton MLA.obr >> << File: Changing non-Scottish civil partnerships to marriages\_ letter to Simon Hamilton MLA.docx >>

**PS/Mr Biagi**

I attach, in ERDM and word, an amended reply accordingly.

[REDACTED]  
 X 43322

**From:** [REDACTED] **On Behalf Of** Minister for Local Government and Community Empowerment  
**Sent:** 20 May 2015 15:31  
**To:** [REDACTED] Minister for Local Government and Community Empowerment  
**Cc:** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights; Cabinet Secretary for Culture, Europe and External Affairs; Minister for Community Safety and Legal Affairs; Lord Advocate; DG Learning & Justice; DG Communities; Hogg KJ (Kenneth); Rennick NS (Neil); Strachan Y (Yvonne); Marshall J (Jan); Ellis T (Tim); [REDACTED]  
[REDACTED] Communications Safer & Stronger; [REDACTED] Solicitor to the Scottish Government and PS; Coull AJ (Alison); [REDACTED] Troup C (Colin) (Dr); [REDACTED]  
**Subject:** RE: Changing civil partnerships registered outwith Scotland into marriages

[REDACTED]

Thanks for this. Mr Biagi has noted, and has asked for the following sentence (in the third substantive paragraph) to be deleted:

'However, we would encourage other jurisdictions, including Northern Ireland, to fully recognise a decision by a couple to change their civil partnership into a marriage.'

The Minister would like to replace it with:

'Since in Northern Ireland there are no marriages for same sex couples, the two jurisdictions are already faced with differences of legal status that must be managed if the couples move from one to the other.'

Mr Biagi feels this removes any suggestion that we are asking for same sex marriage to be recognised in Northern Ireland.

Regards

[REDACTED]

[REDACTED]

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

---

**From:** [REDACTED]  
**Sent:** 15 May 2015 14:11  
**To:** Minister for Local Government and Community Empowerment  
**Cc:** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights; Cabinet Secretary for Culture, Europe and External Affairs; Minister for Community Safety and Legal Affairs; Lord Advocate; DG Learning & Justice; DG Communities; Hogg KJ (Kenneth); Rennick NS (Neil); Strachan Y (Yvonne); Marshall J (Jan); Ellis T (Tim); [REDACTED]  
[REDACTED] Communications Safer & Stronger; [REDACTED] Solicitor to the Scottish Government and PS; Coull AJ (Alison); [REDACTED] Troup C (Colin) (Dr); [REDACTED]  
**Subject:** Changing civil partnerships registered outwith Scotland into marriages

<< File: Changing non-Scottish civil partnerships into marriages\_ submission to Minister.obr >> << File: Changing non-Scottish civil partnerships into marriages\_ submission to Minister.docx >>  
<< File: Changing non-Scottish civil partnerships to marriages\_ letter to Simon Hamilton MLA.obr >> << File: Changing non-Scottish civil partnerships to marriages\_ letter to Simon Hamilton MLA.docx >>

<< File: letter.pdf >>

**PS/Minister for Local Government and Community Empowerment**

I attach:

- Submission (23 pages in total as includes annexes)
- Draft reply to letter from Simon Hamilton MLA of the Northern Ireland Executive (2 pages)
- Letter from Simon Hamilton (2 pages)

In ERDM and word, apart from letter from Simon Hamilton, which is in PDF only.

Routine



X 43322

[REDACTED]

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**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]

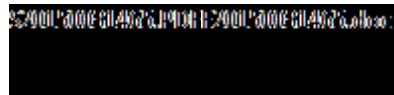
[REDACTED]

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**



[REDACTED]

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**From:** [REDACTED]  
**Sent:** 25 November 2015 14:03  
**To:** zzzMinister for Local Government and Community Empowerment 2014 to 2016  
**Cc:** [REDACTED]  
**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.

[REDACTED]  
X 43322

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**From:** [REDACTED]  
**Sent:** 25 November 2015 13:46  
**To:** [REDACTED]  
**Subject:** FW: 2015/0031465

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**From:** [REDACTED]  
**Sent:** 25 November 2015 13:34  
**To:** [REDACTED]  
**Cc:** Minister for Local Government and Community Empowerment  
**Subject:** 2015/0031465

Hi [REDACTED]

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]  
PS/Minister for Local Government and Community Empowerment, Marco Biagi MSP  
T: [REDACTED] | Ext: [REDACTED] | Office Blackberry: [REDACTED]

[REDACTED]

---

**From:** [REDACTED] on behalf of Minister for Local Government and Community Empowerment  
**Sent:** 05 November 2015 12:14  
**To:** [REDACTED]  
**Subject:** RE: Changing non-Scottish civil partnerships into marriages in Scotland: briefing note on concerns raised by UK Government and Northern Ireland administration

[REDACTED]

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]

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

---

**From:** [REDACTED]  
**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); [REDACTED] UK Relations Team; [REDACTED]  
**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.

[REDACTED]

Family and Property Law  
X 43322

[REDACTED]

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**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**

Cabinet Secretary for Health and Wellbeing  
Alex Neil MSP

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Simon Hamilton MLA  
Department of Finance and Personnel  
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BELFAST  
BT4 3SX

In 2014 Scotland Welcomes the World



April 2014

## MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014

I am writing to Maria Miller, the Secretary of State for Culture, Media and Sport, to seek agreement to make an Order under section 104 of the Scotland Act 1998, on provision that is necessary or expedient following the passage of the Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”). I am writing to you to seek your agreement to aspects of the section 104 Order extending to Northern Ireland, as outlined below.

The 2014 Act introduces same sex marriage in Scotland; allows transgender people who married in Scotland to stay married and obtain a full Gender Recognition Certificate and makes other changes to marriage and civil partnership law in Scotland. I recognise and respect that Northern Ireland has taken a different approach in these areas.

In relation to Northern Ireland, the first area to be covered by the section 104 Order would be to provide that same sex marriages solemnised in Scotland should be recognised as civil partnerships in Northern Ireland. This provision would be on similar lines to Schedule 2 to the Marriage (Same Sex Couples) Act 2013, which introduced same sex marriage in England and Wales, and to which the Northern Ireland Assembly consented by way of a Legislative Consent Motion.

In particular, the section 104 Order will provide that:

- Same sex marriages solemnised in Scotland will be recognised as civil partnerships in Northern Ireland.
- Any dissolution, annulment or legal separation of a deemed civil partnership by a court in Northern Ireland which is recognised throughout the United Kingdom will end the marriage.

- Any dissolution, annulment or legal separation of a deemed civil partnership which is obtained overseas and which is recognised in the United Kingdom will also end the marriage.

The second area affecting Northern Ireland to be covered by the section 104 Order would be some points in relation to transgender people.

Schedule 2 to the 2014 Act allows transgender people whose marriage is registered in Scotland to obtain a full Gender Recognition Certificate (“GRC”) and stay married. It also allows transgender people whose civil partnership is registered in Scotland to obtain a full GRC and stay in the civil partnership, where the civil partners are both obtaining a full GRC on the same day.

The section 104 Order would make the following provision relating to Northern Ireland:

- Allow the provisions of the 2014 Act about applications by transgender people married in Scotland to be recognised under Northern Irish law. (This would not include applications by long-term transitioned people under Part 2 of schedule 2 to the 2014 Act, because those applicants must be ordinarily resident in Scotland).
- Allow an appeal by a spouse (of a marriage registered in Scotland) or a civil partner (of a civil partnership registered in Scotland) to the High Court in Northern Ireland if he or she considers a GRC was secured by fraud.
- Amend the Gender Recognition Act 2004 so that section 21 on the effect of foreign gender change and marriage only applies in Northern Ireland.

The section 104 Order may also need to cover matters that extend to Northern Ireland but are for the UK Government. For example, the Order may need to make a minor consequential change to the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 to reflect that the 2014 Act is abolishing the Scots common law offence of bigamy and replacing it with a statutory offence of bigamy. UK immigration officers have powers of arrest in relation to the offence of bigamy and the 2004 Act needs to be amended on a UK basis to reflect the change in the offence in Scotland.

I would like to assure you that the provisions I am asking for your agreement to essentially replicate what the Northern Ireland Assembly gave its agreement to when considering the UK Government’s Act. Therefore, as we do not intend to make any additional measures in relation to Northern Ireland, I would be grateful for your agreement to make this Order.

I am copying this letter to David Mundell MP, the Parliamentary Under Secretary of State at the Scotland Office.

**ALEX NEIL**

[REDACTED]

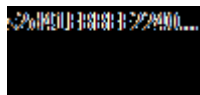
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**From:** [REDACTED] on behalf of Cabinet Secretary for Health and Wellbeing  
**Sent:** 26 June 2014 13:52  
**To:** Cabinet Secretary for Health and Wellbeing; Stockwell SW (Simon)  
**Cc:** DG Learning & Justice; DG Health & Social Care; Rennick NS (Neil); Marshall J (Jan); Coull AJ (Alison); [REDACTED]  
**Subject:** RE: Marriage and Civil Partnership (Scotland) Act 2014: section 104 Order: letter to Northern Ireland

Good Afternoon,

Here is a copy of the signed reply

Thanks



[REDACTED]  
Assistant Private Secretary (Correspondence) to Alex Neil MSP  
Cabinet Secretary for Health and Wellbeing  
The Scottish Government,  
St Andrew's House,  
Edinburgh, EH1 3DG  
Tel: [REDACTED]

Please click [here](#) for information on Mr Neil's Ministerial preferences.

All e-mails and attachments sent by a Ministerial Private Office to another official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the primary recipient. Private Offices do not keep official records of such e-mails or attachments.

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**From:** [REDACTED] **On Behalf Of** Cabinet Secretary for Health and Wellbeing  
**Sent:** 26 June 2014 08:52  
**To:** [REDACTED] Cabinet Secretary for Health and Wellbeing  
**Cc:** DG Learning & Justice; DG Health & Social Care; Rennick NS (Neil); Marshall J (Jan); Solicitor to the Scottish Government and PS; Coull AJ (Alison); [REDACTED]  
**Subject:** RE: Marriage and Civil Partnership (Scotland) Act 2014: section 104 Order: letter to Northern Ireland

[REDACTED]

Thank you for your submission. Mr Neil is content and has signed the letter. [REDACTED] will be in touch with a signed copy asap.

Kind regards  
[REDACTED]



[REDACTED]  
Private Secretary to Alex Neil MSP  
Cabinet Secretary for Health and Wellbeing  
Scottish Government

Tel: [REDACTED] or [REDACTED]  
Email: [REDACTED]

Please click [here](#) for information on Mr Neil's Ministerial preferences.

*All e-mails and attachments sent by a Ministerial Private Office to another official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the primary recipient. Private Offices do not keep official records of such e-mails or attachments.*

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**From:** [REDACTED]  
**Sent:** 25 June 2014 13:55  
**To:** Cabinet Secretary for Health and Wellbeing  
**Cc:** DG Learning & Justice; DG Health & Social Care; Rennick NS (Neil); Marshall J (Jan); Solicitor to the Scottish Government and PS; Coull AJ (Alison); [REDACTED]  
**Subject:** Marriage and Civil Partnership (Scotland) Act 2014: section 104 Order: letter to Northern Ireland

<< File: Marriage and Civil Partnership (Scotland) Act 2014\_section 104\_letter to Northern Ireland.obr >> << File: Marriage and Civil Partnership (Scotland) Act 2014\_section 104\_letter to Northern Ireland.docx >> << File: The Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions and Modifications) Order 2014.doc >> << File: COR 200 response.pdf >>

**PS/Cabinet Secretary**

1. We need to write to Northern Ireland to seek their agreement to provisions in the section 104 Order which impact on their devolved responsibilities (eg recognising Scottish same sex marriages as civil partners).
2. We have already spoken to Northern Ireland at official level (and plan a visit next month) and Mr Neil has had an "in principle" exchange with the Northern Ireland minister, Simon Hamilton MLA. Mr Hamilton's letter of 30 April to Mr Neil is attached.
3. I now attach, in ERDM and word, a letter for Mr Neil to send to Mr Hamilton. This letter should enclose the draft section 104 Order (also attached above).
4. I will put up a further submission this afternoon on implementation of the 2014 Act generally.

[REDACTED]  
Family and Property  
X 43322

Cabinet Secretary for Health and Wellbeing

Alex Neil MSP

T: 0845 774 1741

E: scottish.ministers@scotland.gsi.gov.uk



Simon Hamilton MLA  
Department of Finance and Personnel  
DFP Private Office  
2<sup>nd</sup> Floor  
Clare House  
303 Airport Road West  
Belfast  
BT3 9ED

In 2014 Scotland Welcomes the World



26 June 2014

Dear Simon

**MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014: ORDER UNDER SECTION 104 OF THE SCOTLAND ACT 1998**

Thank you for your letter of 30 April.

I am very grateful for the helpful way your officials are working with mine.

I enclose a copy of the draft Order under section 104 of the Scotland Act 1998. I would be grateful for your confirmation that you are content with the provisions which come under the responsibility of the Northern Ireland Executive and that you are content for the Order containing these provisions to be made.

In order to meet our implementation timetable, this section 104 Order must be laid in the UK Parliament on 13 October 2014. Therefore, a response by 26 September would be appreciated.

My officials and I are happy to discuss.

I am copying this letter to David Mundell MP, the Parliamentary Under-Secretary of State for Scotland at the Scotland Office.

**ALEX NEIL**

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

Alex Neil MSP  
Cabinet Secretary for Health and Wellbeing  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

**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:

Our reference: COR/200/2014

12 August 2014

Dear

*ALEX*

Thank you for your letter of 26 June and for letting me have sight of the Order which will effect the legislative amendments which are required in consequence of the Marriage and Civil Partnership (Scotland) Act 2014.

I note that the Order provides for Scottish same sex marriages to be treated as civil partnerships in Northern Ireland and that it will effect similar amendments to the Gender Recognition Act 2004 as the Marriage (Same Sex Couples) Act 2013. I am grateful to you for having taken account of the Northern Ireland policy position and I am content for you to proceed as proposed.

I mentioned previously that we might have to obtain a legislative consent motion ("LCM") in relation to the Order. On further reflection it has been determined that a LCM is not required. Accordingly, the way is now clear to make the Order and I would be grateful if the date of making could, in due course, be confirmed at official level.

I am copying this letter to the Secretary of State for Northern Ireland.

Yours sincerely



**SIMON HAMILTON MLA**