

Assembly Section

Craigantlet Buildings
Stormont
BT4 3SX
Tel No: 02890 163376
email: Judith.finlay@dfpni.gov.uk



Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

Our Ref : CFP 245/11-15

31May 2013

Dear Shane,

Thank you for your letter of 29 May 2013 which set out the Committee's request for:

- comment on the issues raised in the Assembly research paper on the Marriage (Same Sex Couples) Bill ("the Bill"); and
- information with regard to the equality screening exercise in respect of the proposed legislative consent motion on the Bill.

The Chairman also asked for information on the pension provisions in the Bill and, although this request is not reflected in your letter, the Department has given a brief response below.

The research paper:-

- notes that the proposed legislative consent motion does not extend to Clause 13 of, and Schedule 6 to, the Bill;
- asks whether Clause 15(4) of the Bill is to be covered by the legislative consent motion;

- asks how same sex marriages from the Republic of Ireland will be treated if that jurisdiction introduces same sex marriage;
- notes the position with regard to women who have remained in a marriage after their spouse has acquired a new gender;
- notes that Northern Ireland will retain the existing law with regard to applications for gender recognition certificates and asks if this is likely to be challenged;
- suggests that same sex couples in England and Wales can “soon apply jointly to adopt a child” and asks if there is the potential for a legal challenge in respect of the eligibility criteria in Northern Ireland;
- asks whether “existing adoptions” to same sex couples who move from England or Wales will be recognised in Northern Ireland;
- notes the power to make consequential provision and asks how the power might be exercised;
- highlights the concerns of the Northern Ireland Human Rights Commission (“the NIHRC”) regarding an “unequal level of human rights protection across the jurisdictions of the UK”.

Taking each of those points in order, the Department would say as follows:

- the Department was unable to secure appropriate assurances with regard to the handling of overseas marriages and it will not, therefore, be seeking a legislative consent motion in respect of Clause 13 of, and Schedule 6 to, the Bill;
- Clause 15(4) of the Bill provides for Schedule 7 to the Bill to have effect. Schedule 7 makes transitional and consequential provision and also provides for minor and consequential amendments to legislative provisions which essentially apply to England and Wales. There is, therefore, no need to include that provision in the proposed legislative consent motion;
- it remains to be seen whether same sex marriage will be introduced in the Republic of Ireland. However, if it is, the Department will wish to consider how such marriages are to be treated. The law in Northern Ireland already provides for same sex marriages from a number of

other jurisdictions to be treated as civil partnerships (see Schedule 20 to the Civil Partnership Act 2004) and there is a mechanism which allows for the list of relationships which will automatically be treated as civil partnerships (“specified relationships”) to be amended;

- the UK Government has said that the differences with regard to pension entitlement are a legacy from the past and will eventually cease to exist;
- the existing rules in relation to gender recognition are rights compliant;
- the policy with regard to adoption is a matter for the Department of Health, Social Services and Public Safety. However, we would wish to correct one point in the paper - the law in England and Wales already allows a same sex couple, whether in a civil partnership or not, to jointly adopt a child;
- adoption is the legal process by which the responsibilities and duties in respect of a child are permanently transferred from the birth parent(s) to the adoptive parent(s). Post adoption the child is regarded as having been born to the adoptive parents. The Children (Northern Ireland) Order 1995 was amended to take account of civil partnerships and the fact that the adoptive parents will be treated as civil partners should not present any difficulties;
- at this stage it is not known what further transitional or consequential provision will be required. However, if a transitional/consequential provision order is required and, if that order relates to matters within the devolved sphere, it can only be made with the consent of the Department;
- Hugh Robertson (Minister of State, Department for Culture, Media and Sport) has confirmed that “there is absolutely no requirement on Northern Ireland to introduce same-sex marriages, neither an equality requirement nor a requirement under the European Convention on Human Rights” (see the Hansard report of the Committee session on the Bill on 7 March 2013, column 422). The Bill is not, therefore, being presented as a measure which is required to protect human rights. Moreover, the NIHRC has already conceded that the jurisprudence of the European Court of Human Rights does not require the introduction of same sex marriage (see paragraph 7 of the NIHRC’s letter of 11

June 2012 to the Rt Hon Theresa May MP and Lynne Featherstone MP, which was copied to the Committee).

On pensions generally, the rules relating to pension provision are extremely complex and technical. Paragraphs 117 to 132 of the Explanatory Notes which accompany the Bill set out as clearly as possible how the rules will apply to same sex married couples. For the most part same sex spouses will be treated in the same way as civil partners. However, the notes highlight those instances where a married woman will retain her original pension entitlement after her husband has acquired a new gender and the marriage has become a same sex marriage. The Notes also include some examples of how the rules will operate.

An equality screening exercise has determined that the policy with regard to the treatment of English/Welsh same sex marriages will not have a differential impact and an equality impact assessment is not, therefore, required.

Yours sincerely,

A handwritten signature in cursive script that reads "Judith Finlay".

JUDITH FINLAY
Departmental Assembly Liaison Officer