



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

The Rt Hon Maria Miller MP
Minister for Women and Equalities
House of Commons
LONDON
SW1A 0AA

26 February 2013

Dear Minister Miller

The Northern Ireland Human Rights Commission ('the Commission') is required, pursuant to Section 69(1) of the Northern Ireland Act 1998, to review the adequacy and effectiveness of law and practice relating to the protection of human rights. In accordance with this function the Commission makes the following observations on the Marriage (Same Sex Couples) Bill ('the Bill'), in so far as it relates to Northern Ireland.

The Commission first raised concerns in relation to the potential for the unequal application of human rights protection across the UK in its response to the Equal Civil Marriage Consultation in June 2012 [attached for reference]. Noting the contents of the present Bill before Westminster, those concerns remain unanswered.

The Commission recalls that marriage, by virtue of not being an excepted matter under Schedule 2 or a reserved matter under Schedule 3 of the Northern Ireland Act 1998, falls within the competency of the Northern Ireland Assembly. In order for the Westminster Parliament to legislate in respect of Northern Ireland, a Legislative Consent Motion, pursuant to Northern Ireland Assembly Standing Order 42A, is required. The Commission refers to the sections of the Bill applicable to Northern Ireland, namely Clause 2 of Schedule 2, and is aware that the Northern Ireland Assembly has not yet considered this issue. The Commission seeks clarification regarding how the Government intends to proceed with those aspects of Bill affecting Northern Ireland.

The Commission notes that Clause 2(1) of Schedule 2 of the Bill provides that same sex marriages solemnised in England or Wales

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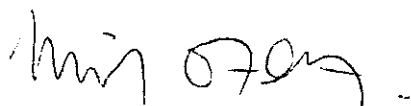
will be recognised as civil partnerships in Northern Ireland.
Clause 2(2) also provides the Secretary of State with the power to specify cases in which a marriage would not be recognised as a civil partnership.

The Commission refers to the human rights analysis under the explanatory note to the Bill, and the recognition that Article 12 of the European Convention on Human Rights ('ECHR') is engaged. The Commission further notes the position of the European Court of Human Rights and the entitlement of the State to raise the levels of human rights protection beyond that required by the jurisprudence.

If the definition of marriage, as understood under the ECHR and as incorporated by the Human rights Act 1998 ('HRA'), has been extended to include same sex couples, there exists the potential for difficulty in the application of the HRA across the jurisdictions of the United Kingdom. There also exists the potential for difficulty in the application in Northern Ireland of relevant jurisprudence emanating from the Supreme Court.

The Commission wishes to have clarified therefore whether the present Bill is seeking to extend the definition of marriage under Article 12 ECHR as incorporated by the Human Rights Act.

Yours sincerely



Professor Michael O'Flaherty
Chief Commissioner

CC. Jim Hood and Gary Streeter, Chairs of Public Bill Committee
Sammy Wilson MP MLA, Department of Finance and Personnel
Daithí McKay MLA, Committee for Finance and Personnel