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Professor Michael O'Flaherty
Chief Commissioner
Northern Ireland Human Rights Commission
Temple Court
39 North Street
Belfast BT1 1NA

Our Ref: CMS 229094/DC

2nd April 2013

Dear Michael,

MARRIAGE (SAME SEX COUPLES) BILL

You ask for further clarification of our view of the relationship between the Marriage (Same Sex Couples) Bill, which will extend marriage to same sex couples in England and Wales, and the Human Rights Act 1998 (the HRA) which extends to the whole of the UK.

We made clear in our earlier response that the UK cannot extend the definition of marriage in Article 12 of the European Convention on Human Rights since that is a matter of international law and cannot be changed unilaterally by contracting States.

It is clear that there is no obligation in law on the UK to make marriage available to same sex couples, as you note, and that the State has a wide margin of appreciation in this matter. It is also quite clear that it is legitimate for a State, in a situation where there are democratic, devolved, legislative arrangements, to reflect in law the different wishes and needs of the relevant devolved administrations.

Simply because the Government has gone further in England and Wales than is required under the Convention does not mean that other regions within the UK are required to follow the same approach within the same timescale. Whether to do so is a matter, quite properly, for the devolved authorities.

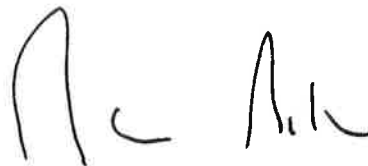
We note that the wording of Article 12 is: "Men and women of marriageable age have the right to marry and to found a family, *according to the national laws governing the exercise of this right* [our highlighting]". This makes it clear that domestic laws govern the right to marry in each State and in each jurisdiction.



Accordingly, in terms of how the extension of marriage in England and Wales to same sex couples will affect the interpretation of the HRA, the courts in England and Wales will consider the legislation and then apply the HRA in that regard. Where domestic provision differs within the UK, then clearly the application of the HRA regarding that provision may differ. So the HRA will continue to apply to all jurisdictions in the UK equally, as you say, but the nature of devolution and differences in provision within the UK may potentially result in different outcomes¹.

This is analogous to the Convention applying equally to all contracting States but being applied differently in different States to take account of national laws and the margin of appreciation.

Best wishes



Rt Hon Maria Miller MP

Secretary of State for Culture, Media and Sport
and Minister for Women and Equalities

Cc

Rt Hon Theresa Villiers MP, Secretary of State for Northern Ireland
Jim Hood MP and Gary Streeter MP, Chairs of Public Bill Committee
Sammy Wilson MP MLA, Department of Finance and Personnel
Daithi McKay MLA, Committee for Finance and Personnel

¹ In *Magee v the United Kingdom* [2000] ECHR 216, objection was made to anti-terrorism legislation in Northern Ireland that was different to the legislation in place in England & Wales. The European Court of Human Rights held that the difference in treatment in such cases resulted not from some different status of the individuals, but from the fact that they were arrested and detained in different regions. An inevitable consequence of a devolved system of government is that there will be different laws applicable to different jurisdictions.