

Our Ref: RM/EJC/EA

4 June 2013

Mr Shane McAteer
Committee Clerk
Committee for Finance & Personnel
Room 419, Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Dear Mr McAteer

Re: Marriage (Same Sex Couples) Bill

I write in response to your letter of 29 May 2013 in which you sought the Commission's views on the provisions of the above Bill which it is proposed will be covered under a legislative consent motion.

As you know, the Commission is responsible for implementing the equality legislation in Northern Ireland, including legislation outlawing discrimination on the grounds of sexual orientation and gender. Our response is based on those matters relevant to our remit and experience.

We understand that the effect of the legislative consent motion to the Assembly, if agreed, will mean that a number of provisions in the Bill which relate to the treatment of same sex marriages in Northern Ireland and gender recognition, will be considered by the UK Parliament.

We noted that the Department for Finance and Personnel (DFP) has recently indicated to the Committee that the legislative consent motion will be subject to further equality screening. We welcome this commitment and we will consider the DFP's consideration of this in due course.

As regards same sex marriage, we note that Clause 2 (1) of the Bill proposes that a marriage of a same sex couple under the law of England and Wales is to be treated as a civil partnership in Northern Ireland. Clause



2(2) stipulates that the Secretary of State may by order specify cases in which a marriage is not to be treated as a civil partnership. We note that the DFP has indicated to the Committee that the UK Government does not expect that this power will be used and that the UK Government has not been able to elaborate on when it would use it.

We would welcome clarification, in the event that the Secretary of State proposes to exercise this power, whether consultation with the consent of the Assembly is required before the passing of such an order.

Clearly, the introduction of this Bill will mean that same sex couples that are married in England and Wales will have a different legal status if they choose to reside in Northern Ireland.

We recognise that there are a number of differences between how the law applies to married couples and same sex partnerships. It is also clear that across many areas of equality law, there is either different or less protection for individuals in Northern Ireland against discrimination than that enjoyed by individuals in other parts of UK. For example, in some areas lesbian, gay and bisexual (LGB) individuals in NI have less equality rights than LGB individuals residing in other parts of the UK. This includes the right to have civil partnerships registered on religious premises which was introduced in Great Britain under the Equality Act 2010 but has not been implemented in Northern Ireland.

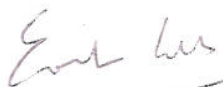
The Equality Commission for Northern Ireland is relying on the Executive to strengthen protection for LGB individuals under NI equality law and to address this gap in legislative protection. Other gaps in protection relate to adoption laws; unlike in GB, same sex couples in Northern Ireland cannot jointly adopt a child. We welcome the fact that DFP has indicated that a child adopted by a same sex couple in England and Wales will be treated as their child if they move to Northern Ireland. We would encourage the DFP to issue clear guidance so that adoptive parents who move from other parts of the UK to reside here are aware of the position. Clearly, the outcome of the Judicial Review brought by the NIHRC has the potential to change the legal position for same sex couples in Northern Ireland seeking to adopt.

Finally, we note that the Memorandum indicates that the UK Government has determined that the provisions in the Bill are compatible with the

European Convention of Human Rights. We bring to the Committee's attention the concerns raised by the NIHRC in its response to the GB consultation on 'Equal Civil Marriage' and in particular its observation that "a change in the law in England and Wales may lead to an unequal level of human rights protection across the jurisdictions of the UK".¹ We understand that the Committee has received a more detailed briefing on this matter from the NIHRC.

I trust this is helpful.

Yours sincerely



Evelyn Collins CBE
Chief Executive

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¹ NIHRC response to Equal Civil Marriage, June 2012 –
<http://www.nihrc.org/index.php/publications/item/272-response-to-the-consultation-on-same-sex-marriage-in-england-wales>