THE LEGISLATIVE REFORM (CIVIL PARTNERSHIP) ORDER 2010

EXPLANATORY DOCUMENT BY THE FOREIGN AND COMMONWEALTH OFFICE

INTRODUCTION

1. This Explanatory Document is laid before Parliament in accordance with section 14 of the Legislative and Regulatory Reform Act 2006 ("the 2006 Act") together with the draft of the Legislative Reform (Civil Partnership) Order 2010 ("the Order") which we propose to make under section 1 of that Act. The purpose of the Order is to amend the Civil Partnership Act 2004 ("the CPA 2004").

2. This Explanatory Document has been prepared by the Foreign and Commonwealth Office (FCO) in order to assist the reader of the Order and to help inform debate on it. It does not form part of the Order and has not been endorsed by Parliament.

OVERVIEW

3. The Consular Section at FCO Posts overseas provides a full range of fee bearing services for British nationals travelling and living overseas, from issuing passports to registering births and deaths and providing services to enable marriage overseas.

4. When the CPA 2004 came into force on 5 December 2005, registration of civil partnerships were included in the services offered by Consular Sections at overseas Posts, provided that the criteria set out in the CPA 2004 were met. Section 210 of the CPA 2004 permits Her Majesty by Order in Council to make provision for civil partnerships to be registered overseas by prescribed officers of Her Majesty's Diplomatic Service ("HMDS"). The Civil Partnership (Registration Abroad and Certificates) Order 2005 ("the 2005 Order") was made under this enabling power, and provides that British consular officers who are members of HMDS can register civil partnerships overseas. The geographical coverage of this order is world-wide, however in practice it applies only in those countries where we have direct representation and where the Host Government has no objection to British consular officers registering civil partnerships.

5. At the time that the CPA 2004 came into force all UK Consular Sections had at least some British consular officers who were members of HMDS, and were thus able to undertake civil partnership registrations under section 210 of the CPA 2004. However since the CPA 2004 came into force there has been a programme of change across the overseas network to localise the work force. For Consular Sections overseas this has meant that many of the UK based consular officer jobs have been replaced by positions that are filled locally. As a result, Consular Posts with only locally-engaged staff are now unable to comply with the requirements of the CPA 2004 for registering a same sex partnership. The localisation programme is continuing throughout the overseas network and thus our ability to continue to provide a civil partnership registration (CP) service to British nationals overseas will become increasingly limited. The restriction on the consular staff members that could perform CPs is in contrast with the position with

respect to marriage as, under the Foreign Marriages Act 1892, locally employed staff members can perform marriages.

6. The problem has become particularly acute in Australia, where the consulates in Brisbane and Perth do not have any HMDS staff. Between August and December 2009 Perth had twelve requests for CP registrations. Three were scheduled to take place during the visit of a HMDS officer in November/December 2009, however this trip had to be cancelled, and forced postponement of the ceremonies. Two of the proposed parties had arranged for their families from the UK to visit and attend the ceremonies, and cancellation therefore caused understandable distress to the individuals affected and, following media reporting of the cancellations, also aggrieved the wider British expat gay community, who felt discriminated against.

7. The logistics and costs of a couple, in addition to at least two witnesses, travelling from areas such as Perth and Brisbane to Sydney, Melbourne or Canberra to undertake a CP registration can be prohibitive both financially and in terms of the necessary time commitment. A flight can take between 5 - 9 hours depending on which Post they travel to, with costs of over £2,000 (at current rates of exchange) for flights and accommodation per couple (not including witnesses / family) in addition to food costs and other expenses. Alternatively a British National could travel to the UK to have their CP, but again the cost would be prohibitive and they would need to meet the UK residency requirements, as well as visa requirements for the partner if the partner were not a British national.

8. The last CP held in Brisbane was in June 2008. Brisbane have since tried to organise several CPs on dates when the High Commissioner or Deputy High Commissioner were visiting, however their programmes have been too busy to incorporate CPs. The last CPs in Perth were in August 2009, and this was only possible because the visiting High Commissioner had had some official meetings cancelled, and therefore had time to conduct the CPs. While HMDS officers can perform CPs during visits to locally-staffed Posts, this is an unsatisfactory solution, as it is vulnerable to last minute changes of plan or cancellations, and entails that senior HMDS officers have to programme additional time during such trips to carry out work that would more properly be done by less senior staff.

9. The purpose of amending section 210 of the CPA 2004 is to allow locally-engaged officers, serving in UK Consular Sections overseas but who are not members of HMDS, to register civil partnerships where we provide these services[1]. The Foreign Affairs Committee (FAC) has raised concerns as to the effect that staffing changes being made to the overseas network will have on the level of service provided to our customers. This amendment will enable civil partnerships to be provided at consulates where there are no HMDS staff, and will thus go some way to address the FAC's concern. It will also ensure that same-sex couples seeking civil partnership are not disadvantaged as compared to heterosexual couples seeking to marry.

[1] We currently provide this service in 20 Posts overseas where prior approval has been obtained from the respective host governments of these countries. See attachment Annex CPA 2010 list

PRE-CONDITIONS

10. William Hague, Secretary of State for Foreign and Commonwealth Affairs, considers that the conditions of section 3(2) of the 2006 Act are satisfied, for the following reasons:

    a) Without amendment to the CPA 2004, certain consulates staffed entirely by local staff would not be able to register civil partnerships.

    b) The amendment proposed is minor, with no increased funding consequences or burdens on Government or on British nationals. It is thus proportionate to the problem to which it is addressed.

    c) Consultations have not identified any persons who will be adversely affected by this amendment.

    d) The amendment does not remove any necessary protection; the Foreign and Commonwealth Office will ensure that local staff's taking on the registration responsibilities continue to be adequately trained and there is not considered to be a significant risk attached to registration by local, as opposed to HMDS, staff. Consular Officers acting as Consuls or Vice Consuls at our Posts overseas, regardless of whether they are local or HMDS, are already experienced Consular officers. They have relevant Consular experience and are well aware of the procedures, often already carry out similarly responsibilities as marriage officers, which is work of similar responsibility and importance. It is unreasonable that the Vice Consul in Tokyo can undertake this work while the Vice Consul in Sydney cannot just because one is a member of HMDS and the other is a member of the local staff.

    e) The amendment does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

    f) The amendment is not of constitutional significance.

PARLIAMENTARY PROCEDURE

11. William Hague, Secretary of State for Foreign and Commonwealth Affairs recommends that the Order be subject to negative resolution procedure. The negative resolution procedure is appropriate in this case because the proposed amendment is minor and is removing an administrative burden. It is not foreseen that any persons will be adversely affected by the amendment as removal of these words does not impact on the underlying principles or purpose of the CPA 2004, and because no objections to the change have been raised by the 12 week consultation process.

EFFECT OF THE PROVISIONS AND THE REMOVAL OF BURDENS ON CONSULAR CUSTOMERS AND STAFF

12. An amendment to section 210 of the CPA 2004 to allow locally-engaged staff to undertake civil partnership registrations would improve the overall standard of service the FCO is currently providing to same sex couples wishing to register their partnership

overseas, so as to make this consistent with the level of service currently being provided for couples wishing to marry. The FCO would train locally-engaged staff to undertake this service in response to changes in the overseas network, however the locally-engaged Consular officers already have awareness of the services undertaken and in many cases are already carrying out similar functions as marriage officers.

13. Currently there are financial and administrative inconveniences for the customer and the FCO with the existing model, as mentioned above. Posts with no HMDS consular officer have to contact nearby British Missions and find out if there is a HMDS officer available to visit in a reasonable time frame to conduct ceremonies. Alternatively, in the cases of Brisbane and Perth, consular officers who are members of HMDS have to travel from Canberra to undertake the ceremonies in the official house there. If there is no other Post in country or within easy reach, then these Posts without HMDS officers will have to cease undertaking any further ceremonies.

14. The effect of the amendment will be to provide the best possible customer service to same sex couples living overseas in countries where we can register civil partnerships, and make the level of service provided equivalent to that currently provided to heterosexual couples seeking to marry. It will reduce the need of same sex couples or HMDS staff to travel long distances to have a CP registered.

15. In Australia, both Brisbane and Perth have identified 2 senior (Head and Deputy Head of Post) local members of Consular staff who would be eligible to undertake such CPs. The Vienna Convention on Consular Relations recognises these grades of officers as being Consular Officers able to perform Consular Functions, and they already perform similar work in relation to marriages. The amendment will not lead to CPs being carried out by consular officers of a lower grade than currently carry out CP and marriage ceremonies.

16. Without the required amendment, the FCO would not be providing the full level of consular services which we are able to perform under the CPA 2004 and we may have difficulty in managing customer expectations where we are withdrawing a service we have previously provided, particularly where the equivalent service for marriages is unaffected. The accepting of a notice of a civil partnership registration and issuing certificates of no Impediments is similar to the marriage services performed by Consular officers pursuant to the Foreign Marriages Act 1892, so it is not anticipated that the local consular staff would have any difficulty undertaking CP work, nor will the change lead to CPs being carried out by officers of any less experience than is currently the case. There is also ongoing overseas training by the FCO trainers (Consular Advanced Workshops, Regional Training course on Consular work) which consular staffs are expected to attend and can be organised relatively quickly to ensure officers are capable of undertaking the work.

17. This amendment is not designed to circumvent processes and to allow any local member of consular staff to undertake such work or for staff to do so in countries that have not agreed to allow same sex ceremonies. Only those officers in Consular Official roles as defined under the Vienna Convention on Consular Relations (e.g. rank of Consul General, Consul, Vice Consul or accepted equivalent) would be granted

authority.) Therefore only local officers that are acceptable to the Host Governments, and working in countries where Host Governments have no objection to British consular officers registering civil partnerships would be given the authority to undertake these activities.

CONSULTATION

18. We took advice from the Government Equalities Office regarding the stakeholders we should approach for consultation. On 2nd March 2009 a Consultation Document was sent to these relevant stakeholders (**Government**: Ministry of Justice; Foreign and Commonwealth Office/FLAGG; General Registry Office England and Wales; DBERR; HMRC / inheritance tax; DWP / international pensions **Non-government**: Stonewall; Gay and Lesbian Foundation; Consortium of LGBT Voluntary & Community Groups) for comments on the amendment.

19. The Consultation Document requested that if any stakeholders believed that any other organisation might have an interest in the issues raised, they should either forward the consultation documentation to the interested parties or refer them to the Foreign and Commonwealth Office. The consultation document was also published on the FCO website for 12 weeks. On 2nd June 2009, after the 12 week consultation period, only 1 representation (from Stonewall) had been received. This representation welcomed the proposed change as it allowed greater flexibility and provided the best possible customer service. There were no changes made as a result of those representations.

EUROPEAN CONVENTION ON HUMAN RIGHTS

20. The Secretary of State for Foreign and Commonwealth Affairs, has made the following statement with respect to human rights:

In my view the provisions of the Legislative Reform (Civil Partnership) Order 2009 are compatible with the Convention rights.

21. Article 8 guarantees the right to respect for private and family life and this Order will ensure that the United Kingdom fulfils its obligations in this context by providing same sex couples wishing to register their partnership overseas with an effective mechanism to do so.

ISSUES ARISING FROM MEMBERSHIP OF THE EUROPEAN UNION

22. We are not aware of any issues affecting this Order arising from the United Kingdom's membership of the European Union.

ANNEX A: LIST OF CONSULTEES

Government

Ministry of Justice

Sheritan Greenland	0207 210 8649	Sheritan.Greenland@justice.gsi.gov.uk
Cheryl Morris	020 333 43132	Cheryl.Morris@justice.gsi.gov.uk
Diana Roy	0207 210 0634	Diana.Roy@justice.GSI.GOV.UK

Foreign and Commonwealth Office

Jackie Connor	0207 008 0314	Jackie.Connor@fco.gov.uk

General Registry Office

David Hillman	0151 471 4452	David.Hillman@gro.gsi.gov.uk

DBERR

Karina Stibbards	020 7215 2571	Karina.Stibbards@dti.gsi.gov.uk

HMRC / inheritance tax

James Couchman		james.couchman@hmrc.gsi.gov.uk

DWP / international pensions

Richard Jordan	020 7962 8201	RICHARD.JORDAN1@DWP.GSI.GOV.UK

Non-government

Stonewall

Jonathan Finney	0207 593 1855	jonathan.finney@stonewall.org.uk
Alan Wardle	0207 593 1850	alan.wardle@stonewall.org.uk

Gay and Lesbian Foundation

Andrew	0161 235 8035	andrew@lgf.org.uk

Consortium of LGBT Voluntary & Community Groups

Mark Reedman	020 7064 8383	mreedman@lgbtconsortium.org.uk

Table of Overseas Posts and their status regarding Civil Partnerships

COUNTRY	HAVE OWN CIVIL PARTNERSHIP LAW	OBJECTS TO CIVIL PARTNERSHIP REGISTRATION IN A BRITISH CONSULATE	DOES NOT OBJECT TO CIVIL PARTNERSHIP REGISTRATION IN A BRITISH CONSULATE	ADDITIONAL COMMENTS
AFGHANISTAN		*		No reply but will believe will object
ALBANIA		*		No reply but will believe will object
ALGERIA		*		No reply but will believe will object
ANGOLA		*		No reply but will believe will object
ANTIGUA & BARBUDA		*		
ARGENTINA	*			
ARMENIA		*		No reply but will believe will object
AUSTRALIA	* In Tasmania only		*	
AUSTRIA	*			
AZERBAIJAN		*		No reply but will believe will object
BAHRAIN		*		Same sex partnership illegal
BANGLADESH		*		Same sex partnership illegal
BARBADOS		*		
BELARUS		*		
BELGIUM	*			
BELIZE		*		Same sex partnership illegal
BOLOVIA		*		No reply but will believe will object
BOSNIA HERZEGOVINA		*		No reply but will believe will object
BOTSWANA		*		Same sex partnership illegal
BRAZIL		*		No reply but will believe will object
BRUNEI		*		Same sex partnership illegal
BULGARIA			*	But object to registration with BN and Bulgarian national
BURMA		*		Same sex partnership illegal
CAMBODIA		*		
CAMEROON		*		Same sex partnership illegal
CANADA	*			
CHILE		*		No reply but will believe will object
CHINA		*		
COLOMBIA			*	
CONGO (Dem Rep)		*		
COSTA RICA			*	

CROATIA			*	But objects to registration with a British National and Croatian.
CUBA		*		No reply but will believe will object
CYPRUS			*	
CZECH REP	*but only applies where one of the party is a Czech national			WEF 1/7/06
DENMARK	*			
DOMINICA		*		No reply but will believe will object
DOMINICAN REP		*		No reply but will believe will object
EAST TIMOR		*		No reply but will believe will object
ECUADOR		*		
EGYPT		*		
ESTONIA		*		
ETHIOPIA		*		No reply but will believe will object
FIJI		*		No reply but will believe will object
FINLAND	*			
FRANCE	*			
GAMBIA		*		Same-sex partnership illegal
GEORGIA		*		
GERMANY	*			
GHANA		*		No reply but will believe will object
GREECE		*		No reply but will believe will object
GRENADA		*		No reply but will believe will object
GUATEMALA			*	
GUYANA		*		No reply but will believe will object
HONG KONG		*		
HUNGARY			*	
ICELAND	*			
INDIA		*		No reply but will believe will object
INDONESIA		*		No reply but will believe will object
IRAN		*		Same sex partnership illegal
IRAQ		*		
IRELAND			*	
ISRAEL (inc Jerusalem)		*		Will request in individual cases
ITALY		*		
IVORY COAST				Post temp closed
JAMAICA		*		
JAPAN			*	
JORDAN		*		Same sex partnership illegal
KAZAKSTAN		*		No reply but will believe will object
KENYA		*		No reply but will believe will object

KOREA		*		No reply but will believe will object
KOSOVA		*		
KUWAIT		*		No reply but will believe will object
LATVIA			*	But objects to registration with a British National and Latvian national
LEBANON		*		
LIBYA		*		No reply but will believe will object
LITHUANIA		*		No reply but will believe will object
LUXEMBOURG	*			
MACEDONIA		*		
MALAWI		*		Same sex partnership illegal
MALAYSIA		*		Same sex partnership illegal
MALTA		*		No reply but will believe will object
MAURITIUS		*		
MEXICO		*		No reply but will believe will object
MOLDOVA			*	
MONGOLIA			*	But objects to registration with a BN and Mongolian national
MONTENEGRO		*		
MOROCCO		*		Same sex partnership illegal
MOZAMBIQUE		*		No reply but will believe will object
NAMIBIA		*		No reply but will believe will object
NEPAL		*		No reply but will believe will object
NETHERLANDS	*			
NEW ZEALAND	*			
NIGERIA		*		No reply but will believe will object
NORWAY	*			
OMAN		*		Same sex partnership illegal
PAKISTAN		*		Same sex partnership illegal
PANAMA			*	
PAPUA NEW GUINEA		*		No reply but will believe will object
PERU			*	
PHILIPPINES			*	Does not object but restricts own nationals registering as it won't be valid in Philippines
POLAND		*		
PORTUGAL	*			
QATAR		*		No reply but will believe will object
ROMANIA		*		No reply but will believe will object
RUSSIA		*		
RWANDA		*		

SAUDI ARABIA		*		Same sex partnership illegal
SENEGAL		*		No reply but will believe will object
SERBIA		*		
SEYCHELLES		*		
SIERRA LEONE		*		No reply but will believe will object
SINGAPORE		*		
SLOVAK REPUBLIC		*		
SOLOMAN ISLANDS		*		Same sex partnerships illegal
SOUTH AFRICA	*			30/11/06
SPAIN	*			
SRI LANKA		*		
ST KITTS & NEVIS		*		
ST LUCIA		*		Same sex partnerships illegal
ST VINCENT & GRENADINES		*		No reply but will believe will object
SUDAN		*		Same sex partnerships illegal
SWEDEN	*			
SWITZERLAND	*			WEF 1/1/07
SYRIA		*		Same sex partnership illegal
TAJIKISTAN		*		No reply but will believe will object
TANZANIA		*		
THAILAND		*		
TRINIDAD & TOBAGO		*		No reply but will believe will object
TUNISIA		*		
TURKEY		*		
TURKMENISTAN			*	
UAE		*		Same sex partnership illegal
UGANDA		*		
UKRAINE		*		
UNITED STATES	*California, Connecticut, Maine, Massachusetts, New Jersey only			Other States awaiting a eply. California allowed for a short period in 2008 only – currently subject to legal challenge through Court of Appeals
URUGUAY			*	
UZBEKISTAN		*		No reply but will believe will object
VENEZUELA			*	
VIETNAM			*	But objects to registration with a BN and Vietnam national
YEMEN		*		Same sex partnership illegal
ZAMBIA		*		Same-sex partnerships illegal
ZIMBABWE		*		Same sex partnership illegal

NOTE

Those countries (listed below) where there is no consular representation will not be able to provide a Civil Partnership registration

Andorra	Macao
Bahamas	Madagascar
Benin	Maldives
Burundi	Mali
Cape Verde	Marshall Islands
Central African Republic	Mauritania
Chad	Micronesia
Comoros	Monaco
Djibouti	Nauru
El Salvador	Niger
Equatorial Guinea	Palau
Eritrea	Paraguay
Gabon	San Marino
Guinea	Sao Tome and Principe
Guinea-Bissau	Somalia
Haiti	Suriname
Honduras	Swaziland
Kiribati	Taiwan
Kyrgyzstan	Togo
Laos	Tonga
Liberia	Tuvalu
Liechtenstein	Vanuatu

Impact Assessment		
Department / Agency: Foreign and Commonwealth Office (FCO)	Title: Impact Assessment of the Legislative Reform (Civil Partnership Act) Order 2010	
Stage: Final Proposal Stage	Version: 1.0	Date: 25 June 2010
Related Publications: Consultation on proposals to amend Section 210(1)(b) Civil Partnership Act 2004, the provision of statements and definition of Consular Officer.		

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What is the problem under consideration? Why is government intervention necessary?

The Civil Partnership Act 2004, as currently worded, does not achieve the original policy intention which was to allow British nationals resident overseas to register their civil partnership at any overseas British Consular sections provided they met the criteria and civil partnership registration was allowed by the Receiving State. Corrective Action is therefore required to allow non HM Diplomatic Service (HMDS) consular officers to undertake such ceremonies.

What are the policy objectives and the intended effects?

The policy objective is to allow same sex couples to have their civil partnership ceremony in the consular district of their choice. This will resolve the current legislative difficulties that some overseas Posts are experiencing due to changes to the FCO's overseas manpower policies whereby HMDS officers are being replaced with locally engaged officers who by definition are not able to undertake this type work. This action will avoid significant and unintended costs for both HMG and consular clients. The FAC has expressed concern at the expense and long distances consular customers have to travel to obtain such consular services.

What Policy options have been considered? Please justify any preferred option?

1. Do nothing;
2. Amending the Civil Partnership Act 2004 by LRRA Order – this is our preferred option. Doing nothing continues the status quo and does not help the situation. Amendments to the primary legislation are needed to reduce administrative burdens on HMG and consular clients.

Ministerial Sign off for Final Proposal Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Date: