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Baroness Thomas of Winchester  
Chairman  
Delegated Powers and Regulatory Reform Committee  
House of Lords  
London SW1A 0AA

Our ref: 233559/DC

9 July 2013

*Dear Celia,*

**Marriage (Same Sex Couples) Bill 2013 – supplementary Government memorandum for the Committee**

I write following my letter to you of 3<sup>rd</sup> July which covered the Government's response to the Committee's 4<sup>th</sup> Report recommendations on certain powers proposed in the Marriage (Same Sex Couples) Bill which is currently at Report stage in the upper House.

Subsequent to our response, you and the Committee's legal adviser raised some concerns about the newly proposed sub-delegation power and in particular expressed concern about the breadth of the power. As drafted in amendment 123, this would enable any power in the Bill for the Secretary of State or Lord Chancellor to make orders or regulations to include provisions enabling the Registrar General to make regulations in connection with administrative matters.

I am grateful to you both for raising this matter, which has prompted us to look again at what is proposed. As I stated to the House on the evening of 8 July, on reflection we agree that the power was drafted too widely. Our intention is therefore to withdraw amendment 123 and replace it with one that is better suited to the original intention of enabling the Secretary of State to provide for the Registrar General to make regulations about purely administrative matters pertaining to the Registrar General's, superintendent registrars' or registrars' roles in converting civil partnerships to marriage under clause 9.. We also propose that sub-delegation of certain regulation making powers to the Registrar General would be possible in the event of the government deciding to allow marriages by belief organisations in accordance with amendment 90 (for example, Humanists), but only in respect of administrative functions.

I am planning to arrange for the old amendment to be withdrawn and the new amendment tabled for debate tomorrow evening (Wednesday 10<sup>th</sup> July) and I have attached a copy for your information. I am also attaching a supplementary memorandum for the Committee, which sets out details of the new power, its limits and how we envisage that it would be used. It also explains the new order making power created by new clause (*marriage according to the usages of belief organisations*), as a result of the tabling of government amendment 90 at Report.

I hope that you will find our response satisfactory. If you or your officials have any questions, please do not hesitate to contact Matthew King in the Government Equalities Office ([Matthew.king@GEO.gsi.gov.uk](mailto:Matthew.king@GEO.gsi.gov.uk)).

I am copying this letter to Baroness Thornton and arranging for a copy of the supplementary response to be placed in both House libraries.

Yours ever,  
Stowell

**Stowell of Beeston**



# Marriage (Same Sex Couples) Bill

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## AMENDMENTS TO BE MOVED ON CONSIDERATION

### Clause 16

BARONESS STOWELL OF BEESTON

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Page 14, line 19, at end insert—

- “(4A) The provision that the Secretary of State may make in any relevant instrument includes provision enabling the Registrar General to make regulations by statutory instrument (with or without the consent of a minister of the Crown).
- (4B) But the Secretary of State—
- (a) may not make enabling provision which gives the Registrar General power to require a fee to be paid or power to set the amount of a fee; and
  - (b) may not make other enabling provision unless the Secretary of State is satisfied that the provision is necessary in connection with administrative matters relating to functions of the Registrar General or functions of superintendent registrars or registrars.
- (4C) Regulations made by the Registrar General under any enabling provision are subject to annulment in pursuance of a resolution of either House of Parliament.
- (4D) But that is subject to any provision in a relevant instrument about the kind of Parliamentary scrutiny, if any, to which the regulations are to be subject.
- (4E) In subsections (4A) to (4D)—
- “enabling provision” means provision made under subsection (4A) enabling the Registrar General to make regulations;
  - “relevant instrument” means—
    - (a) regulations under section 9{f01}(1) or (2), or
    - (b) an order under section (*Marriage according to the usages of belief organisations*)(4).”

## MARRIAGE (SAME SEX COUPLES) BILL

### SUPPLEMENTARY MEMORANDUM FOR THE DELEGATED POWERS AND REGULATORY REFORM COMMITTEE

1. The Delegated Powers and Regulatory Reform Committee reported on the Marriage (Same Sex Couples) Bill, in its Fourth Report. This supplementary memorandum covers the government's proposals to allow for limited sub-delegation of regulation making powers to the Registrar General, and the new order making power set out in new clause (*marriage according to the usages of belief organisations*) proposed by government amendment 90.
2. Since responding to the Committee's Report on 3<sup>rd</sup> July, and in response to input from the Committee's legal adviser and Chair, the government has reconsidered the breadth of Amendment 123. That amendment was tabled to allow the Secretary of State or Lord Chancellor to sub-delegate to the Registrar General a power to make subsequent additional regulations about administrative matters; and proposed at paragraph 6 of the Government's response to the Committee of 3<sup>rd</sup> July. In common with other existing regulation making powers afforded to the Registrar General that relate to administrative matters in respect of marriage, the intention was to allow for a similar power in respect of new marriage procedures set up under the Bill. The government considered it important to ensure that such sub-delegation was explicitly provided for on the face of the enabling primary legislation.
3. As currently drafted, the power would extend to any power of the Secretary of State or Lord Chancellor to make regulations or orders under the Bill. The government agrees that this power is too broadly drafted. The government will table a further amendment which will restrict the ability of the Secretary of State to confer regulation making powers on the Registrar General to the following provisions only:

#### **Clause 9 – regulations establishing a procedure for conversion of civil partnership into marriage**

4. The power will only allow the Registrar General to make regulations where it is necessary to do so in connection with administrative matters relating to the functions of the Registrar General, superintendent registrars or registrars. These regulations could involve, for example, changes to the format of registers and prescribed forms. It will not include any power for the Secretary of State to sub-delegate the power to make provision for fees. Given that the power is restricted to administrative matters relating to the functions of the Registrar General, superintendent registrars or registrars only, the government considers that it is now consistent with the scope of the powers currently afforded to the Registrar General in the Marriage Act 1949. Further, the power may only be delegated to the Registrar General by



virtue of regulations made by the Secretary of State The first regulations made by the Secretary of State will be by affirmative procedure and subsequent exercise by way of negative procedure, so Parliament will have the opportunity to scrutinise and to reject or to annul any enabling regulations made by the Secretary of State if it considers that the provision for sub-delegation is not appropriate.

**New clause (Marriage according to the usages of belief organisations)**

5. The government has tabled an amendment providing for a review of whether to permit the solemnization of marriages according to the usages of belief organisations (government amendment 90). Should the government decide to provide for such marriages as a result of the review and public consultation, we considered that it was necessary to ensure that there was a legislative power to achieve this. Subsection (4) of the new clause provides a power for the Secretary of State to make such provision. The Secretary of State may amend England and Wales legislation and make provision for the charging of fees. The government considered whether the power to amend legislation set out in subsection (5)(a) of this new clause may extend to making provision for sub-delegation to the Registrar General. Given the need to be explicit in legislation where the intention is to sub-delegate powers, we considered it best to place this beyond doubt through a specific amendment allowing for this.
6. The power for the Secretary of State to sub-delegate regulation making powers to the Registrar General in relation to this new clause will only be permitted where it is considered necessary in connection with administrative matters relating to the functions of the Registrar General, superintendent registrars or registrars, as explained above. It will not include a power for the Secretary of State to sub-delegate provisions as to fees. As the Registrar General already has similar powers in the Marriage Act 1949 to make regulations about administrative matters related to the registration of marriages, the government considers it appropriate to make provision for this should it legislate to permit the registration of marriages according to the usages of belief organisations. Further, the enabling provisions made by the Secretary of State under this new clause will be subject to the affirmative procedure, and so Parliament will have the opportunity to consider and debate the appropriateness of any such sub-delegation to the Registrar General.
7. In both cases, any regulations made by the Registrar General as a result of these powers will, by default, be subject to the negative resolution procedure. Where the Secretary of State considers it appropriate, the enabling regulations could alternatively provide for a different procedure, or no procedure to apply to the regulations made by the Registrar General, the latter being consistent with the

conventional approach adopted for administrative regulations made by the Registrar General.