

**FOI 0196-16 – Bermuda Digest**

**1) From:** GEO

**Sent:** 01 July 2014 09:11

**To:** FCO; GEO

No comment from us, that looks fine.

**From:** FCO

**Sent:** 30 June 2014 20:25

**To:** Governor; GEO

George, and of course worth pointing out that we don't have an Embassy in Bermuda or a Consular mandate as it is a British OT.

**From:** Governor

**Sent:** Monday, June 30, 2014 05:48 PM

**To:** FCO; GEO

We have had a request this morning from a local journalist following up Friday's story in the Telegraph about Embassies conducting same sex marriages in countries which (a) allow us to and (b) which don't offer the service themselves. The reporter has asked if we (Government House) will conduct ceremonies.

In the light of my exchange with (Redacted S40), below, I propose to say that, while the UK Parliament has passed legislation establishing same sex marriage in England and Wales, same sex marriages celebrated in England and Wales are not automatically recognised in Scotland, Northern Ireland, the Crown Dependencies or Overseas Territories. This will be a matter for the other legislatures concerned. Scottish legislation establishing same sex marriages there and recognising marriages celebrated in England and Wales will come into force soon. Marriage law in Bermuda is a matter for the Bermuda legislature and not the UK Government. Government House does not have a role in civil marriages, same sex or otherwise.

OK?

**From:** GEO

**Sent:** 30 May 2014 13:06

**To:** Governor

Thanks for your quick response, it's really appreciated.

When the Scottish legislation comes into force, there will be mutual recognition between the English and Welsh legislation and the Scottish Legislation. There are some differences, but nothing that should be problematic. In Northern Ireland marriages of same sex couples will only be recognised as civil partnerships - there was a recent debate there on the issue and there will not be any change soon.

Melanie Field was the Deputy Director of this team up until a few months ago, and led the Marriage (Same Sex Couples) Bill team - so I don't think we could have sent anyone better!

Regards,

**From:** Governor

**Sent:** 29 May 2014 15:01

**To:** GEO

Bermuda does not have same sex marriages, nor civil partnerships (though it passed last year legislation prohibiting discrimination on grounds of sexual orientation, with significant input from a good secondment from the Equalities Office).

Before we go further with the local Government here on recognition of English & Welsh same sex marriages, it would be useful to know how the recognition issue works between other elements in the realm of the UK. Does Scotland (before its own legislation come into force) recognise E&W ones? Northern Ireland? I wouldn't hold my breath on Bermuda moving on this quickly. But seeing how other UK-linked jurisdictions are handling it would be useful background.

Thanks.

---

**2) From:** FCO

**Sent:** 03 June 2014 13:45

**To:** Executive Officer, Government House (XO)

I have received a couple of queries about GEO's recent Diptel and thought it would be helpful to advise that I am investigating this and will revert to you with confirmation of this and the deadline (which is not mentioned).

Nevertheless, I think it would be prudent for us to have a central record within OTD of the state of play of this issue across the OTs. LGBT and policies designed to advance their rights have long been considered sensitive in many of the OTs and consequently they appear not to have been promoted to the same extent as other human rights issues by 'the centre'. However, there are signs that this may change and given the PM's desire for HMG to have a robust LGBT strategy in light of recent events in Africa and this Diptel, among others, I think we could expect to see some focus on what OTs are doing and to what extent HMG is encouraging this in the future.

With this in mind, among other considerations, I have produced the attached table, which is based on the questions below as well as the issue of the non-discriminatory age of consent and the presence, if any, of any legislation within the OTs that prohibits discrimination on the grounds of sexual orientation.

I would be grateful if you could help me populate it. I have made a start to the best of my knowledge but please feel free to correct and amend. In the event DCMS wants to hear from the OTs, I can then – with your consent – use the information provided to answer their specific questions on behalf of OTD as a whole rather than you having to submit separate responses/duplicate what you have given me.

In the absence of a deadline from GEO, **is it possible to aim for close this week?**

**From:** Diptel FCO (Sensitive)

**Sent:** 29 May 2014 04:29

**To:** Diptel All Posts (Sensitive)

## Summary

**Request for action. Posts to provide information for the Government Equalities Office (GEO) on whether your host country recognises marriages of same sex couples formed in England and Wales as marriages; or if not, if it has plans to do so and whether there is opportunity to encourage this. We also provide an update on conducting marriages of same sex couples in our missions overseas. Posts are also reminded to respond to diptel 1400798 'Instructions for posts to lobby host governments on recognition of Civil Partnerships'. Re-issued with lower classification and attachment**

1. The United Kingdom's Marriage (Same Sex Couples) Act 2013 (M(SSC)A) received Royal Assent last year and came into force in March this year. The first marriages of same sex couples in England and Wales were carried out on 29<sup>th</sup> March. The M(SSC)A provides for overseas same sex marriages to be recognised as marriages in England and Wales from 13 March 2014. Non-marital overseas relationships, such as civil unions, will continue to be recognised as civil partnerships in England and Wales under the Civil Partnership Act 2004. There is separate legislation in Scotland which has not yet been enacted. Northern Ireland will not offer marriage for same sex couples.
2. As the number of jurisdictions which allow same sex marriages increase, many foreign nationals will enjoy the benefits of their same sex marriage being given legal recognition in England and Wales. We would like UK nationals in a same sex marriage to enjoy reciprocal treatment in other countries, and we therefore wish to establish whether other jurisdictions recognise same sex marriages and would treat England and Wales same sex marriages as marriage or an equivalent. This information will help people who formed their same sex marriage in England and Wales to be clear about the legal status of their relationship and their rights and responsibilities when they travel or live abroad.
3. For those countries which do not offer same sex marriage, we are looking for an opinion on whether the host nation would be likely to recognise UK same sex marriages, and whether there is any opportunity for the UK government to encourage recognition.
4. We would be grateful if Action Posts could provide (Redacted S40) in the Government Equalities Office (contact details below) with the following information:

- Does your host country and/or its territories currently treat England and Wales marriages of same sex couples as equivalent to marriages or other legal unions registered in its own jurisdiction?

- If not, will your host country and its territories be likely to recognise them in the future, or be susceptible to encouragement? If so, what opportunities are there for UK government to encourage recognition?

5. Posts who have not yet responded to Dip Tel 1400798, issued on 31 January, 'Civil Partnership Act 2004: Instructions for posts to lobby host governments on recognition of Civil Partnerships' are also asked to confirm whether their host country recognises civil partnerships formed in the UK.

6. The attached document gives more information on conducting marriages of same sex couples in Embassies.

7. Please send the information to:

LGB&T Team

Government Equalities Office

4<sup>th</sup> Floor, 100 Parliament Street, London SW1A 2BQ

---

**3) From:** Deputy Governor  
**Sent:** 10 February 2015 15:55  
**To:** FCO

Apologies

I thought we had dealt with this but now see that it was in fact the ICCPR request we responded to which was dealing with the same topic.

I think I know the answers to the questions which are:-

- No legislation covering CPs or Same Sex marriage and no, they are not recognised here

(Redacted S27) But if you are in touch with (Redacted S40) you might like to double-check that I have not misunderstood what she said (and that the answers I have given above are accurate).

**From:** FCO

**Sent:** 11 February 2015 16:41

**To:** Deputy Governor

**Subject:** Human rights - LGBT,

**LGBT**

Last year, I began the process of consulting your offices on a number of LGBT issues, namely:

- what, if any, statutory provisions there were in your territories relating to the recognition of either civil partnerships or same sex marriages;

I am pleased to confirm the table has finally been completed and I attach a copy for your reference. I shall separately retain a copy on file. However, do let me know if there are any developments in the future.

Territory	Civil Partnerships and Same Sex Marriage			Age of Consent		Legal protection	
	<p>Has the OT legislated for <b><u>Civil Partnerships</u></b> (Y/N)? If yes:</p> <p><b>a)</b> what legislation?</p> <p><b>b)</b> what is the age requirements?</p> <p><b>c)</b> Is the age requirements same as heterosexual marriages?</p>	<p>Has legislated for <b><u>same sex marriage</u></b> (Y/N)? If yes:</p> <p><b>a)</b> what legislation?</p> <p><b>b)</b> what is the age requirements?</p> <p><b>c)</b> Is the age requirements same as heterosexual marriages?</p>	<p>Does the OT legally recognise <b><u>same sex marriages</u></b> that have been registered in England and Wales (Y/N)? If yes:</p> <p><b>a)</b> what legislation?</p> <p><b>b)</b> Is it the equivalent to marriages or other legal</p>	<p><b><u>Opinion request</u></b></p> <p>Do you (Governors' Office) think your OT is likely to recognise them in the future, or be susceptible to encouragement?</p> <p><b>a)</b> If <u>yes</u>, what opportunities are there for UK government to encourage recognition?</p> <p>If <u>no</u>, why? (your</p>	<p>Age of Consent</p> <p>What is the current age of consent for</p> <p><b>a)</b> Heterosexual couples?</p> <p><b>b)</b> Lesbian couples?</p> <p><b>c)</b> Homosexual couples?</p>	<p><b><u>Opinion request</u></b></p> <p>Do you (Governors' Office) think your OT is likely to amend the discrepancy in the future, or be susceptible to encouragement?</p> <p><b>a)</b> If <u>yes</u>, what opportunities are there for UK government to encourage change?</p> <p>If <u>no</u>, why? (your</p>	<p>Has the OT legislated to prohibit discrimination on the grounds of sexual orientation</p> <p><b>a)</b> If <u>yes</u>, what legislation?</p> <p>If <u>no</u>, are there plans to and when?</p>

			unions registered in its own jurisdiction?	assessment)		assessment)	
<b>Bermuda</b>	x	x			Redacted S42		Yes, The Human Rights Act 2013

(Redacted S42)

---

**4) From:** FCO  
**Sent:** 27 February 2015 15:05  
**To:** George Fergusson (Sensitive);

Dear George

Further to my email below, I attach a letter from Ms Jo Swinson MP, Minister for Women and Equalities, at the Government Equalities Office in London that I have just received today (it was already issued). As you may know, GEO, which sits in the UK Department for Culture, Media and Sport is responsible for the Marriage (Same Sex Couples) Act 2013 and Ms Swinson is keen to encourage recognition of same sex unions that are formed in the UK. Please see my email from 4 June 2014 outlining their approach.

Ms Swinson has written to Bermuda following the submission of Bermuda's response (attached) in the hope that Bermuda would do so. You will note that she refers to the island as a country – unfortunately a copy of the draft was not shared with my in advance. I had provided instructions to GEO that given the nature of the correspondence it should be addressed to the Premier and routed through your office. Regrettably they issued the letter before the information was commissioned from me. Nevertheless, I would be grateful if you could kindly take this forward and aim to provide a response before Parliament is dissolved (30 March 2015).

Electronically copies of the territories' responses should be sent to (Redacted S40) from the LGB&T team at GEO (who coordinated the issue of the letters).

---

**5) From** XO Bda  
**To** FCO  
**Sent:** 25 May 2015

Same Sex Marriage

Public opinion statistics on same sex marriage were released this month, which showed that 58% compared opposed same-sex marriages, while 38.6% were in favour of such marriages and 3.4% were unsure. More detailed analysis showed that:

Those between the ages of 18 and 34, were more likely to support same-sex marriages, with 74% of over 55 year olds opposed.

71.9% of 10 Black voters were opposed to same-sex marriages.

68.2% of White and Other voters were in favour of same-sex marriages

Additionally a petition started by a local gay rights organisation [Two Words and a Comma](#) to legalise same sex marriage, gained nearly 2,500 votes, and was passed to Minister Patricia Gordon Pamplin who received it quite sympathetically.

---

**6) From:** XO

**To:** FCO

**Date:** 30/10/2015

#### SUMMARY

The issue of same sex marriage has been topical in Bermuda recently, and is proving to be a divisive one.

#### DETAIL

The topic hit the headlines when Tony Brannan, a local gay rights campaigner, submitted a petition of over 2,500 signatures to the Minister for Community, Culture and Sport Patricia Gordon-Pamplin, earlier this year, which called for same sex marriage to be legalized. Minister Gordon-Pamplin welcomed the petition, and on 28<sup>th</sup> September held a town hall information session in which both supporters and opponents of same sex marriage were invited to discuss the issue. The Ministry has also sought feedback from Residents, giving them a deadline of today (Friday 30<sup>th</sup>) to submit their opinions before next steps are considered. (links below)

Video: <http://bernews.com/2015/09/videos-sex-marriage-info-session/>

article: <http://www.royalgazette.com/article/20150929/NEWS/150929705>

The sessions, which attracted around 200 islanders, were encouraging, not just because they opened up the debate (Redacted S27) Opposing arguments are largely led by religious conviction and the notion of “preserving” the institution of marriage. Indeed a [counter-petition](#) has now been launched along these lines, apparently led by religious leaders, with advertisements also appearing on local media. Organisers of this opposing petition maintain they are acting on behalf of concerned citizens, and consider same sex marriage as condoning sinful behaviour and a threat to the traditional family structure. The Church is still an influential force in Bermuda and persuading deeply conservative church-goers of a different viewpoint will be a challenge.

Race and politics are also important factors. The ruling OBA Party was elected on a slim majority and a recent poll reported by the daily Royal Gazette this week showed the OBA would lose votes from males, black, religious and PLP supporters if it supported same sex marriage (links included at the end of this report). The “who would you vote for” (if the election was held today) poll, shows OBA and the Opposition PLP as neck and neck with 35% of votes each, and 28% saying they don’t know or refuse to answer. It is that 28% that both parties will be looking to influence.

The OBA will be watching the polls carefully, and will need to balance public opinion with human rights considerations. They found the courage to introduce legislation changes in 2013 that made it illegal to discriminate on the grounds of sexuality; this was considered a big step forward for Bermuda, but may have left a feeling that they have “done enough for now” on gay rights issues.

**Some other useful recent mentions of the issue include:**

Former PLP politician Renee Webb coming out in support of same sex marriage <http://www.royalgazette.com/article/20151028/NEWS/151029683>. She had herself (unsuccessfully) tried to bring human rights protections for homosexuals brought into Bermuda legislation while serving for the party.

The Royal Gazette released its own [opinion piece on 28<sup>th</sup> October](#) , which offered some insight into Bermuda’s general reluctance to accept change, and how this may have affected the same sex marriage issues. It is well written and worth a read.

**Links to referenced Royal Gazette Polls:**

[Should same sex marriage be legalised?](#)

[How would your opinion of the Bermuda Government change if it legalised same-sex marriage?](#)

We expect to see media coverage and public opinion on the issue continue over the coming months, and will report any further developments.

---

**7) From: XO**

**To: FCO**

**Date: 2/12/2015**

SUMMARY

Bermuda took a significant step forward this week, as the Supreme Court ruled that those in same sex partnerships with Bermudians should be afforded rights equal to those in heterosexual relationships.

BACKGROUND

The ruling follows the Bermuda Bred company filing legal action against the Ministry of Home Affairs and the Attorney-General, stating that when read in conjunction with the Human Rights Act (which does not allow discrimination on the grounds of marital status or sexual orientation), The



Immigration and Protection Act should allow for such recognition of same sex spouses of Bermudians. During his ruling, Chief Justice Kawaley essentially outlined 5 key components of legislation whereby the non-recognition of same sex partners appeared contradictory, and therefore discriminatory (as reported by Bernews):

**Must In The Public Interest Be Permissible To Discriminate**

“As I acknowledged in the course of the hearing, it is true that it must in the public interest be permissible to discriminate [to the extent permitted by section 12[4][b] of the Bermuda Constitution] when formulating legislative and administrative rules relating to the entry of persons to Bermuda from different countries [e.g. on health or public safety grounds]

**Legally Impossible To Avail Themselves Of Rights”**

“To the extent that Bermuda law does not currently recognise same sex marriage it is legally impossible for same sex Bermudian and non-Bermudian partners to marry and avail themselves of the spouse’s employment rights, as heterosexual couples might do.”

**Same Sex Marriage Neither Possible Nor Recognised**

“Because same sex marriage was neither possible nor recognised under existing Bermudian law, the relevant statutory provisions discriminated against Bermudians in stable same-sex relationships in an indirect way.

Because while a heterosexual Bermudian at least had the option of marrying his or her partner with a view to receiving the benefit of spousal rights, this option was not available to homosexual Bermudians in that foreign same-sex marriages were not recognised and local same sex marriage was not legally possible.”

**Indirectly Discriminatory On The Grounds Of Sexual Orientation**

“The Applicant’s Skeleton Argument advanced the substantive point in the following brief and conclusive manner: 5.1 The 1956 Act provides for spouses of Bermudians to be able to live and work in Bermuda, provided certain conditions are met.

It makes no such provision for same sex partners of Bermudian. It is submitted that this is directly discriminatory on the basis of marital status, and indirectly discriminatory on the grounds of sexual orientation, for the same reasons as were held in A&B-v-Director of Child and Family Services.

It is submitted that ss. 25 & 60 of the 1956 Act ought to be read so as to allow bona fide same sex partners of Bermudians to reside and work in Bermuda, subject to the same conditions that are imposed on spouses of Bermudians as to good character, the Bermudian partner’s continued ordinary residence, etc.”

**Sections of the Immigration Act Shall Be Inoperative**

“Sections 25 [, 27, 27A] and 60 of the Bermuda Immigration and Protection Act 1956 shall be inoperative to the extent that they authorise the Minister to deny the same-sex partners of persons who possess and enjoy Bermuda status, and who have formed stable relationships with such Bermudians, residential and employment rights comparable to those conferred on spouses by the said sections 25 and 60 respectively.”

WHAT THIS MEANS FOR BERMUDA

The Government’s legal team have requested a 12 month suspension of the declaration to allow them to identify all necessary legislation changes. A hearing on whether to allow this will take place in the coming days, after which the Government will decide whether to appeal the decision, according to Senator Michael Fahy. It will be a huge task to identify all affected legislation, and to draft the required amendments. While the decision by Chief Justice Ian Kawaley is a major one, he has nevertheless made it clear that the ruling is neither a comment on the issue of, nor a pre-cursor to, enacting same sex marriage (a topic which continues to prove highly divisive).

While on the issue of same-sex marriage however, it is worth reporting that earlier in the month (November) the Hamilton Princess Hotel withdrew its offer to host a speech from US Same Sex marriage opponent Ryan Anderson, declaring that they “would not be a venue for anti-diversity discussions”. This forced organisers to re-locate the event to the New Testament Church of God in Hamilton (on 1<sup>st</sup> and 2<sup>nd</sup> December), and there is some debate amongst lawyers on the island as to whether hotel management have violated human rights legislation. The preserve marriage group (who organized the speech) have not commented on whether they will officially file a complaint against the hotel.

Undoubtedly much more to follow on this over the coming months.

---

**8) From: XO**

**To: FCO**

**Date: 16/12/2015**

SUMMARY

Some updates on our previous report on same-sex partnership recognition (with reference to the attached)

BACKGROUND

Chief Justice Ian Kawaley rejected Bermuda Government’s request to allow 12 months to fully identify and correct the legal ramifications of his ruling that same sex partners of Bermudians should be afforded the same legal rights to find and seek employment as heterosexual couples. He has instead given them until February to ensure all legislation is free from such discrimination. The Bermuda Bred Company had taken the case to court in November, claiming that when read in conjunction with the Human Rights act, Bermuda’s legislation proved discriminatory against homosexuals, despite discrimination on the grounds of sexuality having been illegal in Bermuda since 2013.

(Redacted S27)

OTHER

Royal Gazette has lent its support to the same-sex marriage debate in a well written article in Tuesday 15<sup>th</sup> December’s paper. [Link](#)

---

**9) From: Deputy Governor**

**Sent: 09 February 2016 21:02**

**To: FCO**

**Civil Union Legislation**

In response to a judgement by the Chief Justice that tackled the differing treatment of same sex partners of Bermudians in terms of immigration and employment, the Government has brought forward draft legislation which will introduce Civil Unions in Bermuda. The Chief Justice gave the Government until 29 February to take the necessary steps before his judgement would enter into force. The public discussion of this subject culminated in a ‘pray in’ at the House of Assembly after

churches let out on Sunday and demonstration by c.600 supporters of 'traditional' marriage and a counter demonstration of c.200 by the Rainbow Alliance today at the Cabinet Office timed to coincide with the weekly Cabinet meeting.

---