



Foreign &
Commonwealth
Office



Department
for International
Development

28 August 2020

Our reference: MC2020/16988

Hon. Arden Mclean
Leader of the Opposition
93 Smith Road,
#4B Windward Centre,
PO BOX 545,
Grand Cayman,
KY1- 1502,
Cayman Islands

Dear Mr Mclean,

Thank you for letter of 13 August 2020 to the Foreign Secretary regarding the decision of the Governor and UK Government to intervene using section 81 of the Cayman Islands Constitution to legislate for domestic partnerships. I am replying as the Minister responsible for the Overseas Territories.

I recognise that same sex partnership is seen as a controversial issue by many in the Cayman Islands and that feelings run high on both sides. I firmly believe that the strongest, safest and most prosperous societies are those in which all citizens can live freely without fear of discrimination, and where all citizens, including members of the LGBT community, can play a full and active part in society. I also believe that the rule of law must be upheld in the UK and all of the Overseas Territories.

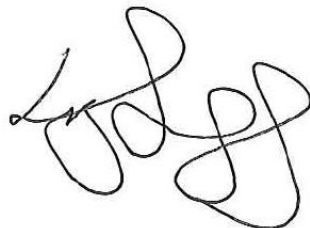
As you know, in November 2019, the Cayman Islands Court of Appeal overturned a previous ruling legalising same sex marriage, but found that the claimants were entitled, expeditiously, to legal protection in the Cayman Islands that is functionally equivalent to marriage and indicated that the Legislative Assembly should act quickly to that effect. The Cayman Islands Court of Appeal judgment also stated that should the Legislative Assembly fail to take expeditious action, the court would expect the UK Government “*to recognise its legal responsibility and take action to bring this unsatisfactory state of affairs to an end*”.

I commend the efforts of the Cayman Islands Government for bringing legislation to recognise same sex relationships in law to the Legislative Assembly, to address a breach of section 9 of the Cayman Islands Bill of Rights. I was disappointed that the Legislative Assembly felt they could not comply with the Cayman Islands Court of Appeal judgment, notably as the remit of the Legislative Assembly is to uphold the law. You will recall that the judgment also made reference to the non-compliance with article 8 of the European Convention on Human Rights (ECHR). The UK is committed to membership of the Council of Europe and its principle convention, the ECHR. This will not change as we leave the European Union.

For this reason, I wrote to the Governor on 5 August 2020, instructing him to use his reserved powers under section 81 of the Cayman Islands Constitution to enact legislation to ensure the Cayman Islands Court of Appeal decision is complied with, to give legal protection which is functionally equivalent to marriage to same sex couples. I did not take this decision lightly, but it was necessary to ensure the rule of law is maintained in the Cayman Islands. You will have seen my instruction letter, as I gave permission to the Governor to publish what is usually confidential correspondence.

I do not agree that there was insufficient time to discuss the Domestic Partnerships Bill. The Government published the bill for a 28-day period of public consultation, one week longer than is normal practice, and it was extensively debated in the Legislative Assembly. Indeed, the Governor published it for a further 21-day period of consultation, with substantive legal comments under consideration by the Attorney General's Office.

Like your original letter, I have copied this letter to the Premiers and Opposition Leaders in Bermuda and the other Caribbean Overseas Territories.

A handwritten signature in black ink, appearing to be 'Sugg', written in a cursive style.

BARONESS SUGG
Minister for Sustainable Development and the Overseas Territories