

MARRIAGE (SAME SEX COUPLES) ACT 2013

EXPLANATORY NOTES

INTRODUCTION

Background and summary

Background

3. Under the previous law, a marriage could only be between a man and a woman. Marriage law in England and Wales is based on where the marriage ceremony takes place. The Marriage Act 1949 (the “Marriage Act”) sets out that a marriage can be solemnized (solemnization is the legal ceremony which gives effect to the marriage) either in religious buildings, through a religious ceremony, or on secular (non-religious) premises, through a civil ceremony. The law makes particular provision relating to marriage according to the rites and ceremonies of the Church of England and the Church in Wales, and to marriages according to the rites and usages of the Jewish religion and the Quakers (Society of Friends).
4. Same sex couples may register a civil partnership under the Civil Partnership Act 2004 (the “Civil Partnership Act”). A civil partnership is only available to same sex couples and can only be conducted through a civil ceremony, although following legislative change in 2011 this may be held in a religious building.
5. The position of the Church of England is different from that of other religious organisations for three main reasons:
 - as the established Church, its Canons (church laws) form part of the law of the land;
 - as the established Church, it can amend or repeal primary legislation through a Measure passed by its Synod, provided the Measure is subsequently approved by both Houses of Parliament and receives Royal Assent;
 - its clergy are under a common law duty to marry a parishioner in his or her parish church. The Church in Wales has a similar duty by virtue of it previously being established (it became disestablished in 1920).
6. In March 2012 the Government Equalities Office published a consultation on “Equal Civil Marriage”, which looked at how to enable same sex couples to marry. The consultation made clear that no religious organisation or its ministers would be forced to conduct marriage ceremonies for same sex couples. The consultation ran for 13 weeks, closing on 14 June 2012. Just over 228,000 responses were received, together with 19 petitions. This is the largest response ever received to a Government consultation, highlighting that this is an important issue to a great many people. This was followed on 11 December 2012 by the Government’s response to the consultation, which confirmed that the Government would proceed with its proposal to introduce marriage for same sex couples. The Government also decided that it would permit religious marriage ceremonies for same sex couples according to the rites of religious organisations that wished to opt in to this provision, whilst providing protection for religious organisations and their representatives who do not wish marry same sex couples.

Summary

7. The Act gives effect to the Government's proposals. Its main purpose is to enable same sex couples to marry, either in a civil ceremony (i.e. a civil ceremony in a register office or approved premises e.g. a hotel) or, provided that the religious organisation concerned is in agreement, on religious premises, with the marriage being solemnized through a religious ceremony.
8. Key elements of the Act:
 - provide that same sex couples can get married in England and Wales;
 - provide that such marriages are the same as marriages between a man and a woman under the law of England and Wales;
 - permit marriage of same sex couples by way of a civil ceremony;
 - permit marriage of same sex couples according to religious rites and usages where a religious organisation has opted in to that process (with the exception of the Church of England and the Church in Wales);
 - provide a process by which the Church in Wales can request and obtain legislative change to allow marriages of same sex couples according to its rites if it wishes to do so;
 - provide that there will be no obligation or compulsion on religious organisations or individuals to carry out or participate in a religious marriage ceremony of a same sex couple;
 - provide protection under equality law for religious organisations and individuals who do not wish to marry same sex couples in a religious ceremony;
 - provide for reviews of:
 - whether an order should be made permitting belief organisations to solemnize marriages and to consider what provision should be made in the order;
 - the operation and future of the Civil Partnership Act in England and Wales;
 - survivor benefits under occupational pension schemes.
9. The Act does not remove the availability of civil partnerships for same sex couples. There is provision in the Act for those in a civil partnership to convert that relationship to a marriage if they choose to do so.
10. Religious organisations and their representatives who do not wish to marry same sex couples are protected from being compelled to do so through a series of religious protections, including:
 - an explicit provision in the Act that no religious organisation can be compelled to opt in to marry same sex couples or to permit this to happen in their place of worship, and no religious organisation or individual can be compelled to conduct religious same sex marriage ceremonies;
 - amendments which the Act makes to the Equality Act 2010, to provide that it is not unlawful discrimination for a religious organisation or individual to refuse to marry a same sex couple in a religious ceremony;
 - an "opt-in" mechanism whereby a marriage of a same sex couple cannot be carried out on religious premises or with a religious ceremony without the express consent of the religious organisation's governing body;
 - ensuring that the Act does not interfere with Anglican Canon law or ecclesiastical law;

*These notes refer to the Marriage (Same Sex Couples) Act
2013 (c.30) which received Royal Assent on 17 July 2013*

- ensuring that the common law duty on Church of England and Church in Wales clergy to marry parishioners does not extend to same sex couples.
11. The Act does not amend marriage legislation to allow Church of England clergy to solemnize marriage of same sex couples according to its rites, and specific provision is made to ensure that the nature of marriage in Anglican Canon law is unaltered. Specific provision is made to ensure that the common law duty to marry parishioners, which applies to the clergy of both the Church of England and the Church in Wales, (and any corresponding right of parishioners to be married by such clergy) does not extend to same sex couples. In order to be able to solemnize marriages of same sex couples, therefore, the Church of England would have to put a Measure before Parliament amending the law to allow this to happen. The Church in Wales is unable to do this, and so the Act provides a power by which this must be done by the Lord Chancellor, by order, should the Governing Body of the Church in Wales request it.
 12. The Act also contains a number of other related provisions, including provisions that will enable a person to change their legal gender without ending their existing marriage; provisions dealing with consular marriage and marriage on armed forces bases overseas; and recognition of certain marriages of same sex couples formed outside England and Wales. There are also consequential and interpretative provisions clarifying how the new law will affect a number of matters, such as state and occupational pensions.
 13. A number of the provisions of the Act are to be given effect through subordinate legislation. Further details of these delegated powers are included in the Delegated Powers Memorandum and explained in the commentary on sections and schedules below.