

# **MARRIAGE (SAME SEX COUPLES) ACT 2013**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

#### ***Territorial extent and application***

##### ***General***

16. The territorial extent and application of the Act is England and Wales only, except for particular provisions as follows:

##### ***Provisions which extend to Scotland***

- In Part 1 of the Act, section 10(3), which gives effect to Schedule 2. Schedule 2 deals with the treatment in the rest of the United Kingdom of marriages of same sex couples under the law of England and Wales.
- Part 2 (other than sections 14 and 15).
- All of Part 3.

##### ***Provisions which extend to Northern Ireland***

- In Part 1 of the Act, section 10(3) and Schedule 2.
- Part 2 (other than the repeal of the Foreign Marriage Act 1892 made by section 13(2), sections 14 to 16, Part 2 of Schedule 5 and paragraphs 4, 5, 10 and 11 of Schedule 6).
- All of Part 3.

##### ***Scotland***

17. The Act provides for marriage of same sex couples to be lawful in England and Wales only. Marriage is an area which is a devolved matter for Scotland, meaning that it is something which is within the legislative powers of the Scottish Parliament. The Act would have certain effects in Scotland, however. It allows for the consequential amendment to legislation in Scotland, as a result of marriage for same sex couples coming into force in England and Wales. If this happens before such time as marriage of same sex couples is lawful in Scotland, the Act contains a power to secure that a marriage of a same sex couple entered into in England and Wales is treated as a civil partnership in Scotland. The provision which the Act makes about consular marriage and marriage on armed forces bases overseas also involves amendment of the law in Scotland. There are also amendments to the law in Scotland as it relates to re-issuing and correcting errors in gender recognition certificates and fraud proceedings under the Gender Recognition Act 2004. Consequential provision of the law in Scotland may also be made as a result of those changes. The statutory review of survivor benefits under occupational pension schemes will extend to Scotland, as well as to England and Wales, and any subsequent order may amend Scottish legislation.

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

18. This Act contains provisions that triggered the Sewel Convention. The provisions relate to the power for the Secretary of State to make an order for a marriage of a same sex couple solemnized in England and Wales to be treated as a civil partnership under the law of Scotland; the power for the Secretary of State to make consequential amendments to the law of Scotland in devolved areas; the power for the Queen to make Orders in Council about how UK consulates overseas carry out marriages and how marriage can take place on armed forces bases overseas insofar as this affects the law of Scotland. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. The Scottish Parliament agreed a Legislative Consent Motion in these terms on 11 June 2013. In making any order or regulations under the Act which contain provision that would otherwise be within the legislative competence of the Scottish Parliament, the Secretary of State or Lord Chancellor will first have to obtain the consent of the Scottish Ministers.

***Wales***

19. The Act allows for marriage of same sex couples in Wales, where the effect will be the same as that in England. Marriage of same sex couples will be equivalent to marriage of opposite sex couples except in certain cases. Existing legislation will be understood as applying to same sex couples as it has done until now to opposite sex couples. New legislation will be read as applying in the same way to same sex couples as to opposite sex couples.
20. As explained above, the Act does not permit religious marriage ceremonies in accordance with the rites of the Church in Wales. However, it does contain provision for the Church in Wales to request a change in the law to enable the marriage of same sex couples according to the rites of the Church in Wales, should it wish to do so (see section 8 of the Act).

***Northern Ireland***

21. Marriage is an area which is a devolved matter for Northern Ireland. The Act does not affect Northern Ireland directly, except as follows:
- there are amendments to the law in Northern Ireland as it relates to re-issuing and correcting errors in gender recognition certificates and fraud proceedings under the Gender Recognition Act 2004;
  - the Act provides that marriages of same sex couples under the law of England and Wales will be treated as civil partnerships under the law of Northern Ireland.
22. The UK Government has proceeded in accordance with the convention that the UK Parliament does not normally legislate with regard to devolved matters in Northern Ireland except with the agreement of the Northern Ireland legislature. There are a number of provisions within the Act which triggered the convention. In addition to the provision of the Act which affects Northern Ireland directly (the treatment of same sex couples married in England and Wales), another provision which triggered that convention is a power for the Secretary of State to make consequential amendments in devolved areas. Other similar provisions include those which relate to the change of legal gender of married persons or civil partners. Any orders or regulations made under the Act which make provision that would otherwise be within the legislative competence of the Northern Ireland Assembly will require the consent of the Department of Finance and Personnel. Section 13 of the Act repeals the Foreign Marriage Act 1892, and Schedule 6 provides for a new regime of consular marriages and marriages on armed forces bases overseas in respect of both opposite sex and same sex couples. The Northern Ireland Assembly made a decision not to include section 13 of, or Schedule 6 to, the Act in the Legislative Consent Motion it passed on 24 June 2013. As a result, the Act excludes Northern Ireland from the new provisions regarding consular marriage and marriage on armed forces bases overseas.