

MARRIAGE (SAME SEX COUPLES) ACT 2013

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Marriage (Same Sex Couples) Act 2013, which received Royal Assent on 17 July 2013. They have been prepared by the Government Equalities Office (which is part of the Department for Culture, Media and Sport), the Ministry of Justice (in respect of provisions relating to marriage law and gender recognition), the General Register Office (which is part of the Home Office) (in respect of provisions relating to the functions of the Registrar General), the Department for Work and Pensions (in respect of provisions relating to pensions and benefits), the Foreign and Commonwealth Office (in respect of provisions relating to consular marriages) and the Ministry of Defence (in respect of provisions relating to the Armed Forces). Their purpose is to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

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;

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- 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.

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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;
 - 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.

Overview of the structure of the Act

14. The Act is largely an amending Act, making amendments to various pieces of primary legislation including:
 - the Marriage Act 1949,
 - the Equality Act 2010,
 - the Marriage (Registrar General’s Licence) Act 1970,
 - the Matrimonial Causes Act 1973,
 - the Domicile and Matrimonial Proceedings Act 1973,

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- the Social Security Contributions and Benefits Act 1992,
 - the Pension Schemes Act 1993,
 - the Civil Partnership Act 2004,
 - the Gender Recognition Act 2004.
15. The Act consists of 21 sections and 7 schedules arranged as follows:
- Part 1 (sections 1-11) (Marriage of same sex couples in England and Wales) contains the main provisions of the Act relating to marriage of same sex couples and Schedules 1 to 4 contain consequential and interpretative provisions relating to Part 1.
 - Part 2 (sections 12-16) (Other provisions relating to marriage and civil partnership) deal with the change of legal gender of a married person or civil partner and marriage overseas (as do Schedules 5 and 6) and with the reviews of marriage by belief organisations, of the operation and future of the Civil Partnership Act in England and Wales and of survivor benefits under occupational pension schemes.
 - Part 3 (sections 17-21) (Final provisions) and Schedule 7 contain the standard technical provisions of the Act, including order-making powers and procedures, interpretation, extent and commencement.

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

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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.

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

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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.