

# MARRIAGE (SAME SEX COUPLES) ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS AND SCHEDULES

#### *Schedule 6 – Marriage overseas*

180. [Schedule 6](#) deals with marriages (including marriages of same sex couples) in British consulates overseas; certificates of no impediment issued to facilitate overseas marriages and civil partnerships carried out under local laws, indicating that no legal impediment has been shown preventing the relevant party from getting married or entering into a civil partnership; and marriages on armed forces bases overseas.
181. The overall effect of Parts 1 and 2 is to provide a power for Her Majesty by Order in Council to legislate in relation to the arrangements for marriage (including marriage of same sex couples) in overseas consulates and the issuing of certificates of no impediment. The provisions in Parts 1 and 2 largely replicate sections 210 (Registration at British consulates etc), 240 (Certificates of no impediment to overseas relationships) and 244 (Orders in Council: supplementary) of the Civil Partnership Act. The Civil Partnership Act (through the Civil Partnership (Registration Abroad and Certificates) Order 2005), allows the provisions of the Foreign Marriage Act 1892 to be replicated for the purposes of carrying out consular civil partnerships. The effect of Part 3 is to provide for a very similar power for Her Majesty by Order in Council to legislate to enable service personnel and accompanying civilians (including same sex couples) to marry overseas.

#### **Part 1 – Consular marriage under UK law**

182. [Paragraph 1\(1\)](#) provides a power for Her Majesty by Order in Council to make provision for couples to marry in the presence of a registration officer outside the United Kingdom provided that the conditions in sub-paragraph (2) are met.
183. The conditions in sub-paragraph (2) that must be satisfied in order for a consular marriage to take place are: at least one of the people proposing to marry must be a United Kingdom national; the people proposing to marry would have been eligible to marry in a specified part of the United Kingdom (this caters for a situation where different parts of the United Kingdom allow or do not allow marriage of same sex couples); the authorities of the country or territory in which the consulate is located will not object; and either there are insufficient facilities for them to marry under the law of that country or territory or, in the case of same sex couples, they cannot be married under the law of that country or territory. For example, currently consular marriages are conducted in Saudi Arabia and five other countries in the Middle East, where there are no local facilities and the local authorities have no objection. The United Kingdom government would need to approach host governments in countries where facilities for marriage of same sex couples do not exist to seek their approval to conduct such marriages.
184. [Paragraph 2](#) allows a consular official to refuse to marry a couple if the officer thinks the marriage would be inconsistent with international law or comity of nations (the mutual respect of one nation for another's usages and practices), although there is a power to provide for an appeal against this decision in the Order in Council referred

to in paragraph 1(1). The Order in Council may also include provisions that enable the marriage to be treated as if the couple had been married in the specified part of the United Kingdom for certain purposes.

## **Part 2 – Marriage under foreign law: certificates of no impediment**

185. **Part 2** (paragraph 7) provides a power for Her Majesty by Order in Council to legislate to make provision for the issue of certificates of no impediment to marriage where a United Kingdom national wishes to marry overseas according to local laws if that country or territory is prescribed in the Order in Council. The Act contains a power to extend this to other “prescribed” persons.

## **Part 3 – Marriage of forces personnel under UK law**

186. **Part 3** provides for a power for Her Majesty by Order in Council to make provision for members of the armed forces serving overseas, and accompanying civilians, to marry in the presence of a chaplain or other authorised officer. Such an Order in Council would replace the Foreign Marriage (Armed Forces) Order 1964, made under section 22 of the Foreign Marriage Act 1892, for both opposite sex and same sex couples. In respect of same sex couples the Order would authorise a marriage only where the couple would have been eligible to marry in a part of the United Kingdom to be determined in accordance with the Order. Thus the marriage of a same sex couple would be authorised only if the relevant part of the United Kingdom were one which permits such marriages. In relation to the marriage of a same sex couple the Order could also include provision prohibiting the use of particular religious rites or usages and will specifically preclude marriage according to the rites of the Church of England or the Church in Wales. The Order must also make provision as to consents to the solemnization of marriages of same sex couples according to other religious rites.

### *Example*

- A couple, where one or both partners are members of the Armed Forces, wish to marry whilst serving in Germany. The Order would govern this marriage taking place in Germany. The couple could elect any part of the United Kingdom where they would have been eligible to marry had they married in the United Kingdom. Where the couple are of the same sex, the marriage could only be authorised if the chosen part of the United Kingdom permitted such marriages.

## **Part 4 – General provisions**

187. **Part 4** contains procedural provisions for making Orders in Council under this Schedule. Such Orders will be subject to the affirmative resolution procedure and may amend United Kingdom legislation. These provisions are necessary to provide a mechanism to amend existing legislation, in order that the procedures for consular marriage, provision of certificates of no impediment and armed forces overseas marriages can be modernised. Should the Orders in Council make provision which would otherwise be within the legislative competence of the Scottish Parliament, then Scottish Ministers must be consulted before the Order in Council is made.