

MARRIAGE (SAME SEX COUPLES) ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 3 of the Marriage Act 1949

Section 3 – Marriage for which no opt-in necessary

36. **Section 3** replaces the existing section 26 in Part 3 of the Marriage Act (Marriages which may be solemnized on the authority of superintendent registrar's certificate) with a new section 26 (Marriage of a man and a woman; marriage of same sex couples for which no opt-in necessary). The new section 26 replicates the existing section 26 for marriages between a man and a woman and further authorises certain marriages of same sex couples (by civil ceremony). New section 26 therefore authorises:
- religious marriage ceremonies between a man and a woman in registered buildings;
 - civil marriage ceremonies for all couples in a register office;
 - civil marriage ceremonies for all couples in approved premises (for example a hotel);
 - religious marriage ceremonies between a man and a woman by the Quakers or those of the Jewish religion;
 - marriages between a man and a woman one of whom is house-bound or detained;
 - civil marriage ceremonies of a same sex couple, one of whom is house-bound or detained;
 - marriages between a man and a woman in a church or chapel of the Church of England or the Church in Wales.
37. Therefore, civil marriage ceremonies of same sex couples are authorised under this section, but religious marriages of same sex couples are authorised under different provisions of the Marriage Act – these are inserted by sections 4 to 6 of this Act, which create arrangements for religious organisations other than the Church of England and Church in Wales to opt in to conducting marriages of same sex couples. Particular provision for the Church in Wales is contained in section 8.
38. This section will allow same sex couples to have a civil marriage ceremony on approved premises such as a hotel or stately home or in a register office, and will also allow the marriage by a registrar of a same sex couple where one of the couple is house-bound or detained at his or her usual place of residence. These marriage ceremonies do not require an opt-in. The remaining provisions of this section restate the provisions in relation to the marriage of opposite sex couples in both civil and religious ceremonies – these marriages also do not require an opt-in.

Section 4 – Opt-in: marriage in places of worship

39. **Section 4** inserts a new section 26A (Opt-in to marriage of same sex couples: places of worship) into the Marriage Act. The effect of the section is to authorise religious marriage ceremonies of same sex couples in certified places of worship (where the relevant religious organisation has opted in and registered the place of worship to solemnize marriages of same sex couples).
40. New section 26A (subsection (1)) permits religious marriage ceremonies of same sex couples in a place of worship that has been specifically registered to solemnize marriages of same sex couples under section 43A (“an appropriately registered building”). New section 43A (inserted by paragraph 2 of Schedule 1 to the Act) sets out the procedure for the registration of a building for religious marriage ceremonies of same sex couples. Subsection (3) of section 26A provides that an application for registration under section 43A cannot be made without the written consent of the relevant governing authority of the religious organisation concerned. Subsection (4) of new section 26A defines what is meant by the “relevant governing authority”. This definition leaves it open to religious organisations to define their governing authority as they wish for the purpose of giving consent to religious marriage of same sex couples.
41. Subsection (5) of new section 26A makes clear that the ability to opt in does not apply in respect of marriage according to the rites of the Church of England or the Church in Wales. In this Part of the Marriage Act, references to the Church of England include the Church in Wales.
42. Subsection (6) makes the provisions of section 26A subject to the provisions of sections 44A to 44C of the Marriage Act and any regulations made under any of these sections. Sections 44A to 44C are new sections inserted by paragraph 3 of Schedule 1 to the Act and make provision about registration of buildings for marriage of same sex couples where buildings are shared by more than one religious organisation.
43. Subsection (2) of section 4 brings into effect Schedule 1 (Registration of buildings etc). This will enable same sex couples to be married in religious ceremonies at certified places of worship where the religious organisation concerned has registered the building for the solemnization of marriages of same sex couples. There is no requirement for religious organisations to register their buildings and, if the organisation does not wish to solemnize marriages of same sex couples, it does not have to do so. This applies to all religious organisations except for the Church of England, the Church in Wales, the Society of Friends (Quakers) and those of the Jewish religion.

Section 5 – Opt-in: other religious ceremonies

44. **Section 5** inserts a new section 26B into the Marriage Act. As mentioned above, three of the kinds of religious marriages of a man and a woman allowed by section 26 of the Marriage Act are marriages of Quakers; marriages according to the Jewish religion; and religious marriage ceremonies of people who are house-bound or detained, e.g. in prison. These marriages are not required to take place in a certified place of worship. New section 26B makes these kinds of marriage available to same sex couples, subject to the relevant opt-in procedure being followed.
45. The section provides that religious marriage ceremonies of same sex couples may take place without the need for registration of a building in the following circumstances:
- marriage in accordance with the religious practices of Quakers, as long as the recording clerk of the Society of Friends in London has consented to marriages of same sex couples.
 - marriage in a religious ceremony of the Jewish religion, as long as the relevant governing authority has consented to marriages of same sex couples. In this case the relevant governing authority will depend on the affiliation of the particular synagogue.

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

46. Where one or both of a same sex couple is house-bound or detained, they can marry through a religious ceremony of any religious organisation except the Church of England or Church in Wales, provided the relevant governing authority has given consent to marry same sex couples. In this case the relevant governing authority has the same definition as in section 26A of the Marriage Act. Marriages of Quakers and of people professing the Jewish religion cannot be authorised under this provision and must be authorised under the other provisions above.