

# MARRIAGE (SAME SEX COUPLES) ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS AND SCHEDULES

#### Part 5 of the Marriage Act 1949

##### *Section 6 – Armed forces chapels*

47. **Section 6** amends Part 5 of the Marriage Act, which deals with marriages in naval, military and air force chapels (referred to in these notes as military chapels). Under that Part, a marriage may take place in a military chapel which has been licensed under section 69 for the solemnization of marriages according to the rites of the Church of England or the Church in Wales, or registered under section 70 for the solemnization of marriages other than according to those rites. Section 6 amends Part 5 of the Marriage Act to make provision for the registration of military chapels for the solemnization of marriages of same sex couples through religious ceremonies, except in accordance with the rites of the Church of England or the Church in Wales.
48. Subsection (2) of section 6 amends section 68 of the Marriage Act so that provisions in Part 5 of that Act which apply to marriages of same sex couples do not apply to marriages according to the rites of the Church of England or the Church in Wales.
49. Subsection (3) of section 6 amends section 70 of the Marriage Act so as to provide that that section does not apply to marriages of same sex couples. However, subsection (4) inserts a new section 70A which allows registration of military chapels for marriages of same sex couples (otherwise than according to the rites of the Church of England or the Church in Wales). Where a chapel is registered under section 70A, section 70A(3) provides that section 70 applies (except the provision which excludes marriages of same sex couples) as if the chapel were registered under that section.
50. Under subsection (1) of the new section 70A a chapel may be registered by the Registrar General on the application of the Secretary of State. Under subsection (2) the procedural requirements of section 70 (for example, in relation to cancellation of registration, and publicising registration and cancellation) apply equally for the purposes of section 70A.
51. Subsections (5) and (6) of the new section 70A provide a power for the Secretary of State to make regulations about the registration of chapels under the section and the cancellation of registration, which may include provisions about the procedures to be followed and any consents that must be obtained before an application for registration may be made. Military chapels are, with a small number of exceptions, in the ownership of the Crown rather than religious bodies and the power to make regulations under subsection (5) provides the flexibility to accommodate the specific circumstances of these chapels in England and Wales. Any such regulations must be made by the affirmative procedure.

##### *Example*

- A military chapel can be registered for marriages of same sex couples under regulations made under this section. Religious ministers officiating at military

chapels are authorised to officiate by the denominations and are registered to officiate at a specific chapel or chapels. The protections set out in section 2 will apply, so it would be dependent on (a) the relevant denomination or religion consenting to conducting marriages of same sex couples according to its rites and (b) the officiating minister agreeing to perform such a marriage. A minister who declines to conduct a religious marriage ceremony of a same sex couple would be protected from a claim under the Equality Act 2010 in relation to the provision of goods and services or in the employment field. Where a military chapel is not registered under this section, no marriages of same sex couples could take place there.

## **The Marriage (Registrar General's Licence) Act 1970**

### ***Section 7 – Opt-in: “deathbed marriages”***

52. **Section 7** amends section 1 of the Marriage (Registrar General's Licence) Act 1970 so that the Registrar General can only authorise a religious marriage ceremony of a same sex couple if the relevant governing authority has consented to marriages of same sex couples. The circumstances in which the Registrar General may authorise a marriage are where one of the couple is seriously ill, for example in a hospital or at home, is not expected to recover and cannot be moved. Marriages according to the rites of the Church of England or the Church in Wales cannot be authorised under section 1 of the Marriage (Registrar General's Licence) Act 1970 so these provisions do not apply to the Church of England or Church in Wales. This section will allow same sex couples to have “deathbed marriages” according to the rites of religious organisations which have opted in to the solemnization of marriages of same sex couples. Civil marriage ceremonies of same sex couples do not require the consent of any governing authority and so can proceed under section 1 of the Marriage (Registrar General's Licence) Act 1970.

## **The Church in Wales**

### ***Section 8 – Power to allow for marriage of same sex couples in Church in Wales***

53. **Section 8** sets out a procedure by which the Church in Wales can choose to allow marriages of same sex couples to take place according to its rites. Should the Governing Body of the Church in Wales resolve that the law should be changed to enable this to happen, it may request that the Lord Chancellor make an order to enable it to do so. Having received such a request, the Lord Chancellor must make an order enabling this to be achieved. In making the order, the Lord Chancellor must have regard to the terms of that resolution, and the order can amend England and Wales legislation (e.g. the Marriage Act) if necessary.
54. The Church in Wales is in broadly the same position as the Church of England as regards marriage law despite the disestablishment of the Church in Wales by virtue of the Welsh Church Act 1914. However, this disestablishment means that the Church in Wales is not itself able to put legislation before Parliament (unlike the Church of England). The power in this section is therefore required so that the law can be changed to allow the Church in Wales to marry same sex couples (if it were to resolve to allow this) without the need for primary legislation. An order under this section is subject to the affirmative procedure.

#### *Example*

- The Governing Body of the Church in Wales resolves to allow the marriage of same sex couples according to its rites but also to allow individual members of the clergy to refuse to take part in such marriages, and requests the Lord Chancellor to make an order to allow this. The Lord Chancellor holds discussions with the Church in

Wales to work out the details of the necessary amendments and sets them out in an order to be laid before Parliament.

## **Other provisions relating to marriages of same sex couples**

### ***Section 9 – Conversion of civil partnership into marriage***

55. **Section 9(1)** enables civil partners who had their partnership formed in England and Wales to have their partnership converted into a marriage, and provides a power for the Secretary of State to make regulations establishing the procedures for doing so. The use of this power is subject to the affirmative parliamentary procedure on first use of the power and the negative procedure thereafter.
56. Subsections (2) and (3) provide a power for the Secretary of State to make regulations establishing procedures for conversion of civil partnerships formed outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 of the Civil Partnership Act which deals with civil partnerships registered at British consulates or by armed forces personnel. Subsection (3) makes clear that this applies where England and Wales is the relevant part of the United Kingdom for the purposes of registration of the civil partnership under the respective Order. The use of this power is subject to the affirmative parliamentary procedure.
57. Subsections (4) and (5) set out the scope of the regulation-making powers, including regulations about:
- the application procedure for conversion;
  - the information required to support the application;
  - declarations to support an application to convert (for example, by the civil partners themselves);
  - a requirement for applicants to appear for example before a local registrar or at a register office, in order, for example, to validate their identity;
  - conferral of functions in connection with applications to convert on, for example, the Secretary of State, the Registrar General, armed forces personnel, or other persons. These functions include record-keeping; issuing certified copies of records; conducting civil ceremonies or services following conversion into a marriage;
  - application fees and fees for connected functions.
58. Under subsection (6), the completed conversion process automatically ends the civil partnership and the couple are treated as having been married since the date the civil partnership was formed.

### ***Section 10 – Extra-territorial matters***

59. **Section 10** provides that existing or new marriages of same sex couples that take place outside England and Wales can be recognised as marriages under the law of England and Wales. It is irrelevant whether the law of the place of marriage provides for marriage of same sex couples before or after this provision comes into force. Section 10 also gives effect to Schedule 2, which contains more detailed provisions (see below). Overseas marriages of opposite sex couples which are valid as to capacity and form according to the relevant law are recognised under the law of England and Wales. New and existing overseas marriages of same sex couples which are valid as to capacity and form according to the relevant law will be recognised under the law of England and Wales from the date of implementation of the Act.

## **Effect of extension of marriage**

### ***Section 11 – Effect of extension of marriage***

60. **Section 11(1)** provides that, as a result of the extension of marriage to same sex couples, marriage has the same effect in law in relation to such a couple as it does in relation to an opposite sex couple. Section 11(2) ensures that the law of England and Wales, including all existing and new England and Wales legislation, will be interpreted in this way. Subsection (3) brings into effect Schedule 3, which provides specific provision for interpretation of existing legislation (Part 1) and new legislation (Part 2). Section 11(1) and (2) with Schedule 3 together set out the equivalence of all marriages in law.
61. There are some circumstances in which the effect which would be obtained by the application of section 11 needs to be clarified or where it is not to apply. So subsection (4) brings into effect Schedule 4 which provides separately for the effect of the extension of marriage in particular cases and contains a power (Part 7) to make provision that is contrary to the provisions in subsections (1) and (2) of this section, section 9(6)(b) of the Act, and Schedule 3.
62. Subsection (6) provides that the equivalence provisions of this section and Schedule 3 do not affect Measures and Canons, subordinate legislation, or other ecclesiastical law of the Church of England, ensuring that in Church of England law “marriage” will continue to mean only marriage of a man with a woman.

#### *Examples*

- Except where contrary provision is made, a reference to a “surviving spouse” in existing legislation will be interpreted under section 11 and Schedule 3 so as to include the survivor of a marriage of a same sex couple.
- Except where contrary provision is made, a reference to a “wife” in existing legislation would be interpreted so as to include a woman married to a man and any party to a marriage of a same sex couple, but not a man married to a woman.
- Except where contrary provision is made, a reference to a widower would include a man whose wife has died and the survivor of a marriage of a same sex couple of either sex.
- Except where contrary provision is made, a reference to a married couple will include a reference to a married same sex couple.