

## SCHEDULE 5

Article 29

### CONSEQUENTIAL MODIFICATIONS TO PRIMARY LEGISLATION

#### **Pensions Commutation Act 1871**

1. In section 4 of the Pensions Commutation Act 1871(1) (power to Treasury to commute pensions), for subsection (2) substitute—

“(2) Where any officer in the naval or land forces of Her Majesty whose pension has been commuted under this Act subsequently marries or forms a civil partnership, the officer’s surviving spouse or surviving civil partner shall not be entitled to any pension, and a child of any such officer born after the date of the commutation of the pension shall not be entitled to compassionate allowance.”.

#### **Local Government (Emergency Provisions) Act 1916**

2. For section 2 of the Local Government (Emergency Provisions) Act 1916(2) (payments under superannuation schemes) substitute—

“If an officer or servant of a local authority dies whilst serving in or with His Majesty’s forces, or in consequence of wounds or disease received or contracted during such service which prevented that person from returning to the service of the local authority, the local authority shall have, and shall be deemed always to have had, power to make to that person’s surviving spouse, surviving civil partner or other dependants, such payments as could have been made to them under any superannuation scheme (whether established by statute or otherwise) in force in the district had that person been actually serving the local authority at the time of death.”.

#### **Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951**

3. In the closing words of section 46(3) of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(3) (payments to make up civil remuneration), for “his widow” substitute “that person’s surviving spouse, surviving civil partner”.

#### **Transport Act 1962**

4. In section 65(5) of the Transport Act 1962(4) (railway savings banks), for the words “is a man” to the end substitute “is a person who dies leaving a surviving spouse or surviving civil partner, that survivor for so long as that survivor does not subsequently marry, enter into a civil partnership or die.”.

#### **National Insurance Act 1965**

5.—(1) In section 37(1) of the National Insurance Act 1965(5) (special provisions as to graduated retirement benefit for widows, widowers and surviving civil partners), as that section has effect in

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- (1) 1871 c.36; section 4 was, in relation to England and Wales, amended by S.I. 2014/560.
  - (2) 1916 c.12; section 2 was, in relation to England and Wales, amended by S.I. 2014/560.
  - (3) 1951 c.65; relevant amendments are as follows: paragraph (a)(i) and (ii) of section 46(3) was substituted by the Superannuation Act 1972 (c.11), Schedule 6, paragraph 30; paragraph (a)(iii) was amended by the Fire and Rescue Services Act 2004 (c.21), Schedule 1, paragraph 12(1) and (2); paragraph (a) was amended, and paragraph (b) inserted, by the 2004 Act, Schedule 26, paragraph 25(1) and (3). Section 46(3) was amended by S.I. 2014/560.
  - (4) 1962 c.46; section 65(5) was amended by S.I. 2014/560. There are other amendments to section 65 not relevant to this Order.
  - (5) 1965 c.51. Sections 36 and 37 of the National Insurance Act 1965 were repealed by the Social Security Act 1973 (c.38) with effect from 6th April 1975 but continue in force by virtue of regulations made under Schedule 3 to the Social Security (Consequential Provisions) Act 1992 (c.6). The relevant regulations are the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978 (S.I. 1978/393), as amended by S.I. 1989/1642, S.I. 1995/2606, S.I. 1996/1345, S.I. 1997/1642, S.I. 1999/2422, S.I. 2005/454, S.I. 2009/497 and S.I. 2009/2206.

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relation to a survivor who attained pensionable age on or after 6th April 2010<sup>(6)</sup>, after “widower”, in each place it occurs, insert “, surviving same sex spouse”.

(2) In section 37(1) of that Act, as that section has effect in relation to a survivor who attained pensionable age before 6th April 2010, after paragraph (c) insert—

“or

(d) where a man, having paid graduated contributions as an insured person, dies leaving a widower, and they have both attained pensionable age at the time of his death; or

(e) where a woman, having paid graduated contributions as an insured person, dies leaving a widow, and they both attained pensionable age at the time of her death.”

### **Transport Act 1978**

6. In section 21 of the Transport Act 1978<sup>(7)</sup> (travel concessions for transferred employees), for “widows” substitute “surviving spouses, surviving civil partners”.

### **Pneumoconiosis etc. (Workers’ Compensation) Act 1979**

7. In section 3 of the Pneumoconiosis etc. (Workers’ Compensation) Act 1979<sup>(8)</sup> (dependants)—

(a) for subsection (2A) substitute—

“(2A) For the purposes of subsection (1)(c) two persons are in a qualifying relationship if they are living together as a married couple.”; and

(b) omit subsection (2B).

### **Child Support Act 1991**

8.—(1) The Child Support Act 1991<sup>(9)</sup> is amended as follows.

(2) In Schedule 1<sup>(10)</sup> (maintenance assessments), as that Schedule has effect otherwise than by virtue of section 1(3) of, and Schedule 1 to, the Child Support, Pensions and Social Security Act 2000<sup>(11)</sup>, in Part 1 (calculation of child support maintenance), in paragraph 6 (protected income)—

(a) in sub-paragraph (5)(b)<sup>(12)</sup>, for sub-paragraphs (i) to (iii) substitute—

“(i) is living together in the same household with another adult who is his or her spouse or civil partner; or

(ii) is living together in the same household with another adult as if they were a married couple.”, and

(b) omit sub-paragraph (5A)<sup>(13)</sup>.

(3) In Schedule 1 (maintenance calculations), as that Schedule has effect by virtue of section 1(3) of, and Schedule 1 to, the Child Support, Pensions and Social Security Act 2000, in Part 1 (calculation of weekly amount of child support maintenance), in paragraph 10C (references to various terms)—

<sup>(6)</sup> Section 37(1) was most recently amended by regulation 4(1) to (3) of the Social Security (State Pension and National Insurance Credits) Regulations 2009 (S.I. 2009/2206) but regulation 4(4) of those Regulations provides that the amendment made by regulation 4(2) of those Regulations does not apply where the survivor attained pensionable age before 6th April 2010.

<sup>(7)</sup> 1978 c.55; section 21 was amended by the London Regional Transport Act 1984 (c.32), Schedule 6, paragraph 14; the Transport Act 2000 (c.38), Schedule 31, Part 4 (not yet in force); and by S.I. 2014/560.

<sup>(8)</sup> 1979 c.41; subsections (2A) and (2B) of section 3 were inserted by the Welfare Reform Act 2007 (c.5), section 59(2). Subsection (2A) was substituted, and subsection (2B) was omitted, by S.I. 2014/560.

<sup>(9)</sup> 1991 c.48.

<sup>(10)</sup> Schedule 1 was substituted by section 1(3) of, and Schedule 1 to, the Child Support, Pensions and Social Security Act 2000 (c.19) only for specified purposes by S.I. 2000/2994 and 2003/192 and amended by S.I. 2014/560.

<sup>(11)</sup> 2000 c.19.

<sup>(12)</sup> Sub-paragraph (5)(b) was substituted by the 2004 Act, Schedule 24, paragraph 4 and amended by S.I. 2014/560.

<sup>(13)</sup> Paragraph 6(5A) of Schedule 1 was inserted by the Civil Partnership Act 2004, Schedule 24, paragraph 5.

- (a) for sub-paragraph (5)(14) substitute—
  - “(5) In sub-paragraph (4)(a), “couple” means—
    - (a) two people who are married to, or civil partners of, each other and are members of the same household; or
    - (b) two people who are not married to, or civil partners of, each other but are living together as a married couple.”, and
- (b) omit sub-paragraph (6).

### **Social Security Administration Act 1992**

**9.** In section 15A of the Social Security Administration Act 1992(15) (payment out of benefit of sums in respect of mortgage interest etc.)—

- (a) in subsection (4), in paragraph (b) of the definition of “partner”, for “husband and wife or as if they were civil partners” substitute “if they were a married couple”; and
- (b) omit subsection (4B).

### **Trade Union and Labour Relations (Consolidation) Act 1992**

**10.** In section 38(1) of the Trade Union and Labour Relations (Consolidation) Act 1992(16) (members’ superannuation schemes: separate fund to be maintained), in paragraph (a), after “widows’ ” insert “, widowers’, surviving civil partners’ ”.

### **Pension Schemes Act 1993**

**11.—(1)** The Pension Schemes Act 1993(17) is amended as follows.

(2) In section 8(2) (meaning of certain terms), in the definition of “guaranteed minimum pension”, after “widower’s” insert “, surviving same sex spouse’s”.

(3) In section 17 (minimum pensions for widows and widowers)(18)—

- (a) in subsection (2)—
  - (i) in paragraph (a), after “man” insert “, or a woman in a relevant gender change case,”; and
  - (ii) after paragraph (c) insert—
    - “(d) if the earner is a man who has a guaranteed minimum under that section, the weekly rate of the widower’s pension will not be less than the surviving same sex spouse’s guaranteed minimum;
    - (e) if the earner is a woman (other than in a relevant gender change case) who has a guaranteed minimum under that section, the weekly rate of the widow’s pension will not be less than the surviving same sex spouse’s guaranteed minimum.”;
- (b) in subsection (4), after “partner’s” insert “or surviving same sex spouse’s”;

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(14) Sub-paragraphs (5) and (6) of paragraph 10C were substituted by the 2004 Act, Schedule 24, paragraph 6 and amended by [S.I. 2014/560](#).

(15) [1992 c.5](#); section 15A was inserted by the Social Security (Mortgage Interest Payments) Act [1992 \(c.33\)](#), the Schedule, paragraph 1 and was, in relation to England and Wales, amended by [S.I. 2014/560](#). Subsection 4B was inserted by the Civil Partnership Act 2004, Schedule 24, paragraph 57(3). There are other amendments to subsection 4 not relevant to this Order.

(16) [1992 c.52](#); section 38(1) was amended by [S.I. 2014/560](#).

(17) [1993 c.48](#); sections 8, 17, 24D, 37, 47, 83 and Schedule 3 were amended, and section 38A inserted by the 2013 Act, Schedule 4, paragraphs 18 to 26. Section 17 was further amended by [S.I. 2014/560](#).

(18) Section 17(2) was amended for England and Wales by the 2013 Act, Schedule 4, paragraphs 18 and 20 and by [S.I. 2014/560](#).

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- (c) in subsection (4A)(c)(i)(**19**), for paragraphs (a) and (b) (but not the “nor” following paragraph (b)) substitute “another person are living together as a married couple;”;
- (d) in subsection (5), at the beginning insert “In the case of a woman who is the widow of a man,”;
- (e) in subsection (6)—
  - (i) at the beginning insert “In any other case,”; and
  - (ii) after “widower’s” insert “, widow’s”;
- (f) for subsection (9) substitute—
  - “(9) In relation to an earner who is a woman, a reference in this section to a relevant gender change case is a reference to a case where—
    - (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
    - (b) the marriage of the earner and her widow (that ends with the earner’s death) subsisted before the time when the certificate was issued.”.
- (4) In section 24D (survivors’ benefits)(**20**)—
  - (a) in subsection (2), after “earner” insert “is a man married to a woman or a woman married to a woman in a relevant gender change case, and the earner”;
  - (b) in subsection (3)—
    - (i) after “earner” insert “is a married woman (other than in a relevant gender change case), a man married to a man, or a civil partner, and the earner”;
    - (ii) after “widower” insert “, widow”;
  - (c) after subsection (3) insert—
    - “(4) In relation to an earner who is a woman, a reference in this section to a relevant gender change case is a reference to a case where—
      - (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
      - (b) the marriage of the earner and her widow (that ends with the earner’s death) subsisted before the time when the certificate was issued.”.
- (5) In section 37 (alteration of rules of contracted-out schemes)(**21**) for subsection (4) substitute—
  - “(4) The reference in subsection (3) to a person entitled to receive benefits under a scheme includes a person who is so entitled by virtue of a qualifying relationship only in such cases as may be prescribed.
  - (5) For that purpose a person is entitled to receive benefits by virtue of a qualifying relationship if the person is so entitled by virtue of being—
    - (a) the widower of a female earner;
    - (b) the widower of a male earner;
    - (c) the widow of a female earner, except where it is a relevant gender change case; or
    - (d) the survivor of a civil partnership with an earner.

(19) Subsection (4A) was inserted by the Child Support, Pensions and Social Security Act 2000, Schedule 5, Part 1, paragraph 1(1) and amended by [S.I. 2005/2050](#).

(20) Section 24D was inserted by the Pensions Act 2007 (c.22), section 14(3). Section 24D was amended in relation to England and Wales by the 2013 Act, Schedule 4, paragraph 21(2)-(4).

(21) Section 37 was substituted by the Pensions Act 1995 (c.26), Schedule 5, paragraph 39. Subsection (4) was amended by the [Civil Partnership \(Contracted Out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005/2050](#), Schedule 1 paragraph 12; section 37(4)-(7) was, in relation to England and Wales, substituted by the 2013 Act, Schedule 4 paragraph 22.

(6) In relation to a widow of a female earner, the reference in subsection (5)(c) to a relevant gender change case is a reference to a case where—

- (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
- (b) the marriage of the earner and her widow (that ends with the earner's death) subsisted before the time when the certificate was issued.”

(6) In section 47 (further provisions about effect of entitlement to guaranteed minimum pension on payment of social security benefits)(22), in subsection (1) after “widower” insert “, surviving same sex spouse”.

(7) In section 84 (basis of revaluation)(23), in subsection (5), after “widower” insert “, surviving same sex spouse”.

(8) In section 99(3)(b) (trustees' duties after exercise of option)(24), for “his widow” substitute “his or her surviving spouse or civil partner”.

(9) In Schedule 3 (methods of revaluing accrued pension benefits)(25), in paragraph 1(1E)(b), after “widower” insert “, surviving same sex spouse”.

### **Jobseekers Act 1995**

**12.**—(1) Section 35 of the Jobseekers Act 1995(26) (interpretation) is amended as follows.

(2) In subsection (1), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple otherwise than in prescribed circumstances;”.

(3) Omit subsection (1A).

### **Pensions Act 1995**

**13.** In section 124(1) of the Pensions Act 1995(27) (interpretation of Part 1), omit the definition of “civil partnership status”.

### **State Pension Credit Act 2002**

**14.**—(1) Section 17 of the State Pension Credit Act 2002(28) (other interpretation provisions) is amended as follows.

(2) In subsection (1), for the definition of “couple” substitute—

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(22) Section 47 was amended, in relation to England and Wales, by the 2013 Act, Schedule 4, paragraph 24. There are other amendments to that section not relevant to this Order.

(23) Section 84 was amended, in relation to England and Wales, by the 2013 Act, Schedule 4, paragraph 25. There are other amendments to that section not relevant to this Order.

(24) Section 99(3)(b) was amended, in relation to England and Wales, by the 2013 Act, Schedule 7, paragraph 32. There are other amendments to this section which are not relevant to this Order.

(25) Schedule 3 paragraph 1(1)-(3A) were substituted by the Pensions Act 2008 (c.30), Schedule 2, paragraph 2. Paragraph 1(1E) of Schedule 3 was amended, in relation to England and Wales, by the 2013 Act, Schedule 4, paragraph 26.

(26) 1995 c.18; the definition of “couple” in section 35(1) and subsection (1A) were inserted by the Civil Partnership Act 2004, Schedule 24, paragraph 124(1), (2) and (5), and amended by S.I. 2014/560.

(27) 1995 c.26; the definition of “civil partnership status” was inserted by S.I. 2005/2053 and was, in relation to England and Wales, repealed by S.I. 2014/560. There are other amendments to section 124(1) not relevant to this Order.

(28) 2002 c.16; the definition of “couple” in section 17(1) were inserted by the Civil Partnership Act 2004, Schedule 24, paragraphs 142(1) and (2), and amended by S.I. 2014/560, in relation to England and Wales. Subsection (1A) was inserted by paragraph 143 of Schedule 24 to the Civil Partnership Act 2004.

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
  - (b) two people who are not married to, or civil partners of, each other but are living together as a married couple otherwise than in prescribed circumstances;”.
- (3) Omit subsection (1A).

#### **Gender Recognition Act 2004**

**15.**—(1) The Gender Recognition Act 2004<sup>(29)</sup> is amended as follows.

(2) In section 2 (determination of applications), after subsection (3B) insert—

“(3C) This section does not apply to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3E.”.

(3) In section 3 (evidence), after subsection (9) (as inserted by paragraph 18 of Schedule 5 to the 2013 Act)—

“(11) This section does not apply to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3E.”.

(4) After section 3D (evidence for granting applications on alternative grounds: Scotland) insert—

#### **“3E Alternative grounds for granting applications: Scotland (English and Welsh residents)**

(1) This section applies to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with this section.

(2) In this section, and section 3F, in so far as those sections extend to England and Wales, “protected Scottish civil partnership” and “protected Scottish marriage” have the meanings given by section 25.

(3) The Panel must grant the application if satisfied that the applicant complies with the requirements imposed by and under section 3F and meets the conditions in subsections (4) to (7).

(4) The first condition is that the applicant was a party to a protected Scottish marriage or a protected Scottish civil partnership on or before the date the application was made.

(5) The second condition is that the applicant—

- (a) was living in the acquired gender six years before the commencement of section 29 of the Marriage and Civil Partnership (Scotland) Act 2014;
- (b) continued to live in the acquired gender until the date the application was made; and
- (c) intends to continue to live in the acquired gender until death.

(6) The third condition is that the applicant—

- (a) has or has had gender dysphoria; or
- (b) has undergone surgical treatment for the purpose of modifying sexual characteristics.

(7) The fourth condition is that the applicant is ordinarily resident in England or Wales.

(8) The Panel must reject the application if not required by subsection (3) to grant it.

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<sup>(29)</sup> 2004 c.7. Subsection (3B) was inserted into section 2 by the 2014 Act, schedule 2, paragraph 14. Section 3D was inserted by the 2014 Act, schedule 2, paragraph 17.

### **3F Evidence for granting applications on alternative grounds: Scotland (English and Welsh residents)**

(1) This section applies to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3E.

(2) The application must include either—

- (a) a report made by a registered medical practitioner; or
- (b) a report made by a registered psychologist practising in the field of gender dysphoria.

(3) If the application is based on the applicant having or having had gender dysphoria—

- (a) the reference in subsection (2) to a registered medical practitioner is to one practising in the field of gender dysphoria; and
- (b) that subsection is not complied with unless the report includes details of the diagnosis of the applicant's gender dysphoria.

(4) Subsection (2) is not complied with in a case where—

- (a) the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics; or
- (b) treatment for that purpose has been prescribed or planned for the applicant, unless the report required by that subsection includes details of it.

(5) The application must also include a statutory declaration by the applicant that the applicant meets the conditions in section 3E(3) and (4).

(6) The application must include—

- (a) a statutory declaration as to whether or not the applicant is married or a civil partner; and
- (b) any other information or evidence which the Panel which is to determine the application may require,

and may include any other information or evidence which the applicant wishes to include.

(7) If the applicant is married, the application must include a statutory declaration as to whether the marriage is a protected Scottish marriage.

(8) If the applicant is married, and the marriage is a protected Scottish marriage, the application must also include—

- (a) a statutory declaration by the applicant's spouse that the spouse consents to the marriage continuing after the issue of a full gender recognition certificate ("a statutory declaration of consent") (if the spouse has made such a declaration); or
- (b) a statutory declaration by the applicant that no such declaration by the applicant's spouse is included.

(9) If the application includes a statutory declaration of consent by the applicant's spouse, the Panel must give the spouse notice that the application has been made.

(10) If the Panel which is to determine the application requires information or evidence under subsection (6)(b) it must give reasons for doing so."

(5) In section 8 (appeals etc.), after subsection (5B) insert—

"(5C) If an application under section 4C is granted, the applicant's spouse or civil partner may apply to the High Court to quash the decision to grant the application on the grounds that its grant was secured by fraud."

(6) After section 11B (change of gender of civil partners) insert—

**“11C Continuity of marriage: Scotland**

(1) This section applies in relation to a protected Scottish marriage if (by virtue of section 4(3C)(a), 4C or 4E) a full gender recognition certificate is issued to a party to the marriage.

(2) The continuity of the protected Scottish marriage is not affected by the issuing of a full gender recognition certificate.

**11D Continuity of civil partnership: Scotland**

**11D** The continuity of a protected Scottish civil partnership is not affected by the issuing of full gender recognition certificates (by virtue of section 4(3C)(b)) to both civil partners.”.

(7) In section 21(1A) (foreign gender change and marriage), omit “Scotland and”.

**Asylum and Immigration (Treatment of Claimants, etc.) Act 2004**

**16.** Section 14(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(**30**) (immigration officer: power of arrest) is amended as follows—

(a) omit paragraph (b)(iv); and

(b) before paragraph (c), insert—

“(ba) an offence under section 24(A1) of the Marriage (Scotland) Act 1977 (c.15) (offences)(**31**)”.

**Welfare Reform Act 2007**

**17.—**(1) Paragraph 6 of Schedule 1 to the Welfare Reform Act 2007(**32**) (income-related allowance) is amended as follows.

(2) In sub-paragraph (5), for the definition of “couple” substitute—

““couple” means—

(a) two people who are married to, or civil partners of, each other and are members of the same household; or

(b) two people who are not married to, or civil partners of, each other but are living together as a married couple otherwise than in prescribed circumstances;”.

(3) Omit sub-paragraph (6).

**Human Fertilisation and Embryology Act 2008**

**18.—**(1) The Human Fertilisation and Embryology Act 2008(**33**) is amended as follows.

(2) In section 35 (woman married at time of treatment)—

(a) in the title to the section, after “**married**” insert “**to a man**”; and

(b) in subsection (1)(a), after “marriage” insert “with a man”.

(3) In section 40(1)(b) (embryo transferred after death of husband etc. who did not provide sperm), after “marriage” insert “with a man”.

(30) 2004 c.19.

(31) Section 24(A1) was inserted by section 28 of the 2014 Act.

(32) 2007 c.5; paragraph 6 of Schedule 1 was amended by the Welfare Reform Act 2009 (c.24), sections 5(2), 9(3)(b) and 58(1) and Schedule 7 and S.I. 2014/560, and repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012. That repeal has been brought into force for certain purposes, but has yet to be brought into force for the remaining purposes.

(33) 2008 c.22. Sections 35, 40, 42 and 46 were amended by the 2013 Act, Schedule 7, paragraphs 37 to 41.



- (4) In section 42 (woman in civil partnership at time of treatment)—
  - (a) in the title to the section, after “**partnership**” insert “**or marriage to a woman**”; and
  - (b) in subsection (1)—
    - (i) after “partnership” where it first occurs insert “or a marriage with another woman”; and
    - (ii) after “partnership” where it second occurs insert “or marriage”.
- (5) In section 46 (embryo transferred after death of civil partner of intended female parent)—
  - (a) in the title to the section, after “**civil partner**” insert “**or wife**”; and
  - (b) in subsection (1)(b), after “partnership” insert “or marriage with another woman”; and
  - (c) in subsection (1)(c), (d) and (e), after “partnership” in each case insert “or marriage”; and
  - (d) in the words after subsection (1)(f), after “partnership” insert “or marriage”.

## **Equality Act 2010**

- 19.**—(1) The Equality Act 2010(**34**) is amended as follows.
- (2) In section 67(**35**) (sex equality rule), for subsection (7) substitute—

“(7) If the effect of a relevant matter on a person (A) differs according to the effect it has on a person of the same sex as A, according to whether A is married, in a civil partnership, or for some other reason due to A’s family status, a comparison for the purposes of this section of the effect of that matter on persons of the opposite sex must be with a person of the opposite sex to A who is in the same position as A and in particular—

    - (a) where A is married to someone of the opposite sex, A is to be compared to a person of the opposite sex to A (“B”) where B is married to someone of the opposite sex to B;
    - (b) where A is married to someone of the same sex as A or is in a civil partnership, A is to be compared to B where B is married to someone of the same sex as B or is in a civil partnership.”.
  - (3) Section 80(7)(**36**) (interpretation and exceptions: meaning of “civil partnership status”) is repealed.
  - (4) In section 110(**37**) (liability of employees and agents), after subsection (5B) insert—

“(5C) A does not contravene this section by refusing to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex.

(5D) A does not contravene this section by refusing to register a relevant Scottish civil partnership for the reason that the civil partnership is between two persons of the same sex.

(5E) Subsections (5C) and (5D) apply only if A is an approved celebrant.

(5F) Expressions used in subsections (5C) to (5E) have the same meaning as in paragraph 25B of Schedule 3.

(5G) A chaplain does not contravene this section by refusing to solemnise a relevant Scottish forces marriage for the reason that the marriage is the marriage of two persons of the same sex.

(5H) Expressions used in subsection (5G) have the same meaning as in paragraph 25C of Schedule 3.”.

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(34) 2010 c.15.

(35) Section 67(7) was substituted by [S.I. 2014/560](#).

(36) Section 80(7) was amended by [S.I. 2014/560](#).

(37) Section 110 was amended by the 2013 Act, section 2(5).

*Status: This is the original version (as it was originally made).*

(5) In Schedule 3(38) (services and public functions: exceptions)—

(a) before paragraph 25 insert—  
“PART 6ZA

*MARRIAGE AND CIVIL PARTNERSHIP: SCOTLAND”*,

(b) in paragraph 25, after sub-paragraph (2) insert—

“(3) An approved celebrant (A) does not contravene section 29, so far as relating to gender reassignment discrimination, only by refusing to register the civil partnership of a person (B) if A reasonably believes that B’s gender has become the acquired gender under the Gender Recognition Act 2004.

(4) In sub-paragraph (3) “approved celebrant” has the meaning given in section 94A(4) (a) of the Civil Partnership Act 2004(39).”, and

(c) after paragraph 25A insert—

“PART 6B

MARRIAGE OF SAME SEX COUPLES  
AND CIVIL PARTNERSHIP: SCOTLAND

**25B Marriage of same sex couples and civil partnership: Scotland**

(1) An approved celebrant does not contravene section 29 only by refusing to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex.

(2) An approved celebrant does not contravene section 29 only by refusing to register a relevant Scottish civil partnership for the reason that the civil partnership is between two persons of the same sex.

(3) A person does not contravene section 29 only by refusing to participate in a religious or belief ceremony forming part of, or connected with, the solemnising of a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex.

(4) A person does not contravene section 29 only by refusing to participate in a religious or belief ceremony forming part of, or connected with, the registration of a relevant Scottish civil partnership for the reason that the civil partnership is between two persons of the same sex.

(5) For the purposes of this paragraph, a person is an approved celebrant for the purposes of both marriage and civil partnership whether the person is an approved celebrant within the meaning of section 8(2)(a) of the Marriage (Scotland) Act 1977(40) or section 94A(4)(a) of the Civil Partnership Act 2004.

(6) In this paragraph—

“relevant Scottish civil partnership” means a religious or belief civil partnership within the meaning of section 94A(4)(b) of the Civil Partnership Act 2004;

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(38) Schedule 3 was amended by the 2013 Act, section 2(6).

(39) Section 94A of the Civil Partnership Act was inserted by section 24(13) of the 2014 Act.

(40) Section 8(2)(a) of the 1977 Act was amended by section 12(2)(c) of the 2014 Act.

“relevant Scottish marriage” means a religious or belief marriage of two persons of the same sex within the meaning of section 8(2)(a) of the Marriage (Scotland) Act 1977.

### **25C Marriage of same sex couples: Scottish forces marriages**

(1) A chaplain does not contravene section 29 only by refusing to solemnise a relevant Scottish forces marriage according to religious rites or usages for the reason that the marriage is the marriage of two persons of the same sex.

(2) In this paragraph—

“chaplain” has the meaning given by paragraph (a) of the definition of “authorised person” in paragraph 12(2) of Schedule 6 to the Marriage (Same Sex Couples) Act 2013;

“forces marriage” has the meaning given by paragraph 12(2) of Schedule 6 to the Marriage (Same Sex Couples) Act 2013;

“relevant Scottish forces marriage” means a forces marriage of two persons of the same sex where Scotland is the relevant part of the United Kingdom within the meaning of paragraph 12 of Schedule 6 to the Marriage (Same Sex Couples) Act 2013.”.

(6) In Schedule 23 (general exceptions), in paragraph 2, after sub-paragraph (9) insert—

“(9A) An organisation does not contravene Part 3, 4 or 7 only by refusing to allow premises owned or controlled by the organisation to be used—

(a) to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex;

(b) to register a relevant Scottish civil partnership for the reason that the civil partnership is between two persons of the same sex.

(9B) A person (or a group of persons) does not contravene Part 3, 4 or 7 only by refusing to allow premises owned or controlled by the person (or the group) on behalf of an organisation to be used—

(a) to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex;

(b) to register a relevant Scottish civil partnership for the reason that the civil partnership is between two persons of the same sex.

(9C) An organisation does not contravene section 29 only by allowing an approved celebrant of the organisation to act as set out in sub-paragraph (1) or (2) of paragraph 25B of Schedule 3.

(9D) In sub-paragraphs (9A) to (9C), “approved celebrant”, “relevant Scottish marriage” and “relevant Scottish civil partnership” have the same meaning as in paragraph 25B of Schedule 3.”.

### **Welfare Reform Act 2012**

**20.**—(1) Section 39 of the Welfare Reform Act 2012<sup>(41)</sup> (couples) is amended as follows.

(2) For subsection (1) substitute—

“(1) In this Part “couple” means—

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<sup>(41)</sup> 2012 c.5. Section 39 was amended [S.I. 2014/560](#).

*Status: This is the original version (as it was originally made).*

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
  - (b) two people who are not married to, or civil partners of, each other but are living together as a married couple.”.
- (3) Omit subsection (2).
- (4) In subsection (3)—
- (a) in paragraph (a), for “husband and wife” substitute “married”; and
  - (b) in paragraph (b), for “a man and woman are to be treated as living together as husband and wife” substitute “two people are to be treated as living together as a married couple”.

### **Marriage (Same Sex Couples) Act 2013**

**21.** Paragraphs 29 and 30 of Schedule 7 to the Marriage (Same Sex Couples) Act 2013<sup>(42)</sup> are repealed.

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(42) 2013 c.30.