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

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;

- 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.

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,

- 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

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

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.

COMMENTARY ON SECTIONS AND SCHEDULES

23. This section of the Explanatory Notes provides explanation and comment, where necessary, by section of, and Schedule to, the Act.

Part 1 – Marriage of same sex couples in England and Wales

Extension of marriage

Section 1 – Extension of marriage to same sex couples

24. Section 1 makes marriage of same sex couples lawful in England and Wales and sets out the legislative provisions under which same sex couples may marry. It ensures there is no obligation on the clergy of the Church of England and the Church in Wales to marry same sex couples and makes particular provision to avoid conflict with the Canons of the Church of England.

25. Under subsection (2) marriages of same sex couples may be solemnized in accordance with:

- Part 3 of the Marriage Act, which provides for civil marriage ceremonies in register offices or approved premises such as hotels; and, if the relevant religious organisation has opted in to marry same sex couples, marriages in religious buildings (other than those of the Church of England or Church in Wales), or according to the usages of the Jewish religion or Quakers (Society of Friends) and for certain marriages for detained or house-bound persons;
- Part 5 of the Marriage Act, which provides for marriages in naval, military and air force chapels (but not according to the rites of the Church of England or Church in Wales);
- the Marriage (Registrar General's Licence) Act 1970, which provides for "deathbed" marriages outside registered premises; or
- an Order in Council made under Part 1 or 3 of Schedule 6 to the Act, which may provide for marriages overseas in the presence of a consular officer or for marriage overseas on armed forces bases.

26. The effect of subsection (3) is to preserve the integrity of the Canon law of the Church of England in relation to marriage. Under the Submission of the Clergy Act 1533, Canon law cannot be contrary to general law. In particular, Canon B30 (paragraph 1) states that "The Church of England affirms, according to our Lord's teaching, that marriage is in its nature a union permanent and lifelong, for better for worse, till death them do part, of one man with one woman…".

27. Subsection (3) therefore provides that the maintenance of Canon B30 in particular by the Church of England is not contrary to the general law which enables same sex couples to marry.

28. Subsections (4) and (5) provide that any duty of a member of the clergy of the Church of England or the Church in Wales to solemnize a marriage does not extend to same sex couples. In addition, any corresponding right of parishioners to be married by such

clergy does not extend to same sex couples. The effect of this is that the common law duty on the clergy of the Church of England and the Church in Wales to marry parishioners is not extended to same sex couples.

Examples

- An Anglican vicar preaches in his church that marriage according to the Church of England is only between one man and one woman. This is a lawful explanation of Canon law.
- A man lives next door to a Church of England parish church and wishes to get married there. He is getting married to a woman. Neither of them has ever attended services at the church or professes to be Christian. He speaks to the vicar who agrees to marry the couple, given his legal duty to marry parishioners.
- A man who lives next door to a Church of England parish church wishes to get married there. He is getting married to a man. Both of them regularly attend services at the church and are committed Christians. He speaks to the vicar who has to refuse to marry the couple, since it would not be lawful for him to do so and the legal duty to marry parishioners does not extend to same sex couples.

Religious protection

Section 2 – Marriage according to religious rites: no compulsion to solemnize etc

29. Section 2 protects individuals and religious organisations who do not wish to conduct or participate in a religious marriage ceremony on the ground that it is a marriage of a same sex couple.

30. Subsection (1) states that individuals and religious organisations may not be compelled by any means to carry out an "opt-in activity", which is defined in subsection (3) to mean the various types of activity relating to the decision of a religious organisation to opt in to solemnizing marriages of same sex couples. Subsection (1) also states that they cannot be compelled to refrain from carrying out an "opt-out activity", defined to mean an activity which reverses or modifies the effect of an opt-in activity.

31. Subsection (2) makes clear that individuals may not be compelled by any means to carry out, attend or take part in a religious marriage ceremony of a same sex couple. It also makes clear that individuals and religious organisations may not be compelled to consent to religious marriage ceremonies of same sex couples being conducted. In each case this must be where the individuals or religious organisations do not wish to carry out the specified conduct because it concerns the marriage of a same sex couple.

32. The concept of "compulsion" is a broad one, which would include, but not be limited to, attempts to use criminal or civil law, contractual clauses, or the imposition of any detriment to force a person to carry out such an activity. The section provides no specific remedy, but makes clear that no attempt at such compulsion will be upheld. The remedy for any action taken to compel someone would depend on the nature of the action taken.

33. Subsection (3) contains the definitions of "opt-in" activity and "opt-out activity", and subsection (4) defines various other terms used in the section. It also makes clear that the conduct of a marriage registrar, superintendent registrar or the Registrar General is not included in the protection provided by this section.

34. Subsection (5) inserts new subsections (5A) and (5B) into section 110 of the Equality Act 2010. Section 110(1) of the Equality Act 2010 makes an employee, or an agent for a principal, personally liable for unlawful acts they commit in the course of their employment, or under the authority of a principal, for which their employer or principal could also be held liable. New subsections (5A) and (5B) provide that an individual cannot be held personally liable under the Equality Act 2010 for a refusal to carry out the

conduct specified in subsection (2) of this section where the reason is that the marriage is the marriage of a same sex couple.

35. Subsection (6) inserts a new Part 6A (Marriage of same sex couples in England and Wales) and paragraph 25A (Marriage according to religious rites: no compulsion to solemnize etc) into Schedule 3 to the Equality Act 2010. Schedule 3 deals with exceptions from the prohibition on discrimination in the provision of services and the exercise of public functions. New paragraph 25A provides that it is not unlawful discrimination under that Act for an individual or religious organisation not to carry out the conduct specified in subsection (2) where the reason is that the marriage is the marriage of a same sex couple.

Examples

- The governing body of a religious organisation meets to consider whether to opt in to conducting marriage of same sex couples according to its rites. It decides not to. This would be lawful and no member of the governing body, nor the organisation itself, could be forced, by legal action or otherwise, to change its decision.
- A religious organisation opts in to conducting marriage of same sex couples. However, one of the organisation's ministers does not approve of such marriage and does not wish to solemnize such a marriage. This would be lawful. The religious organisation arranges for an alternative minister to conduct the marriage ceremony for the same sex couple.
- A person who acts as an authorised person at marriages in her local church does not wish to do so in relation to same sex marriage ceremonies, even though the church has opted in to marriage of same sex couples. It would be lawful for her to refuse. A marriage registrar is asked to step in to cover that role, but does not wish to do so because he does not approve of marriage of same sex couples. It would be unlawful discrimination for him to refuse.
- An organist who usually plays at wedding services at a church does not wish to play at a wedding service of a same sex couple. This would be lawful because he is involved in the religious act of worship i.e. the religious ritual of the wedding service. This is the case whether he is a volunteer or employed by the church.
- A commercial photographer is asked to photograph a wedding of a same sex couple. It would be unlawful sexual orientation discrimination for her to refuse because she does not approve of marriage of same sex couples. This is because her role is not part of the religious marriage service.
- A volunteer flower arranger who usually decorates the place of worship for wedding services refuses to do so for a wedding of a same sex couple because she does not approve of such marriages. Her role is not part of the religious marriage service, but her refusal would nonetheless be lawful because the service she offers is to the church rather than to the public or a section of the public, so it is not covered by the Equality Act 2010. If a commercial flower arranger asked by a same sex couple to decorate their wedding venue refused to do so because he does not approve of marriage of same sex couples, this would be unlawful sexual orientation discrimination. This is because his role is not part of the religious marriage service and the service he provides is to the public and so is covered by the Equality Act 2010.
- A chaplain employed by a university is asked to solemnize the marriage of an employee of the university with a person of the same sex. Although his religious organisation has opted in to marriage of same sex couples, he refuses because he does not wish to marry a same sex couple. This is lawful. The university makes alternative arrangements by finding an alternative chaplain to conduct the ceremony.

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.

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.

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.

Part 2 – Other provisions relating to marriage and civil partnership

Section 12 – Change of gender of married persons or civil partners

63. Section 12 brings into effect Schedule 5 (Change of gender of married persons or civil partners). Part 1 of Schedule 5 amends the Gender Recognition Act 2004 to enable couples in "protected marriages" to remain married following one or both parties obtaining gender recognition, if both parties to the marriage wish the marriage to continue. Part 2 of Schedule 5 amends the Gender Recognition Act 2004 to enable applicants who were or who are currently in protected marriages and who started living in their acquired gender a long time ago to apply for gender recognition under a modified medical evidence procedure.

Section 13 – Marriage overseas

64. Section 13 brings into effect Schedule 6 (Marriage overseas) and repeals the Foreign Marriage Act 1892 for England and Wales, and Scotland. The Orders in Council that may be made under Schedule 6 will replace the provision currently made by the Foreign Marriage Act 1892 for marriages for both same sex and opposite sex couples.

Section 14 – Marriages according to the usages of belief organisations

65. Section 14(1) requires the Secretary of State to arrange for a review of whether an order should be made permitting belief organisations to solemnize marriages and to consider what provision should be made in the order. Subsection (7) defines a belief organisation as an organisation whose principal or sole purpose is the advancement of a system of non-religious beliefs which relate to morality or ethics.

66. Under subsections (2) and (3), the arrangements for the review must provide for a full public consultation and the Secretary of State must arrange for a report on the outcome of the review to be produced and published by 1 January 2015. Subsection (4) gives the Secretary of State the power to make provision by order permitting marriages according to the usages of belief organisations. The exercise of this power is subject to the affirmative parliamentary procedure. Under subsection (5), such an order may amend any England and Wales legislation (both primary and secondary legislation), and may make provision for the charging of fees. In accordance with subsection (6), such an order must also provide that there can be no religious element in a marriage ceremony under the order.

Section 15 – Review of civil partnership

67. Section 15 requires the Secretary of State to arrange for a review to be carried out on the operation and future of the Civil Partnership Act in England and Wales. The review must begin as soon as practicable and must include a full public consultation. A report on the outcome of the review must be published.

68. Subsection (2) provides that the review can look at other matters relating to civil partnerships.

Section 16 – Survivor benefits under occupational pension schemes

69. Section 16 requires the Secretary of State to arrange for a review to be carried out on relevant differences in survivor benefits in occupational pension schemes. The review must consider differences between: same sex survivor benefits and opposite sex survivor benefits provided to widows; same sex survivor benefits and opposite sex survivor benefits provided to widowers; opposite sex survivor benefits provided to widows; and opposite sex survivor benefits provided to widowers. The review must consider what the costs and other effects would be if the relevant differences in survivor benefits were eliminated. In particular the review must consider the extent to which occupational pension schemes provide survivor benefits relying on the exception in paragraph 18 of Schedule 9 to the Equality Act 2010 (which provides that it is not unlawful sexual orientation discrimination for an occupational pension scheme not to provide benefits to the surviving partner of a civil partnership, in respect of pension rights accrued by the deceased partner prior to 5 December 2005); and the extent to which same sex survivor benefits and opposite sex survivor benefits are calculated by reference to different periods of pensionable service. The review must include consultation with interested parties whom the Secretary of State considers appropriate, and a report of the review must be published before 1 July 2014. If the Secretary of State, having considered the outcome of the review, thinks that the law should be changed in order to eliminate or reduce differences in survivor benefits, subsection (6) sets out that provision may be made in an order subject to approval by Parliament by the affirmative parliamentary procedure.

Part 3 – Final provisions

Section 17 – Transitional and consequential provision

70. It may be necessary to deal with the transition from the situation where marriage is only available to opposite sex couples to the situation where marriage is also available to same sex couples. It may also be necessary to deal with the consequences of that change. Section 17 provides powers for the Secretary of State or Lord Chancellor to make orders that would allow these sorts of circumstances to be dealt with:

- transitional, transitory or saving provision in connection with the coming into force of any provision of the Act may be made under subsection (1);
- provision in consequence of the Act may be made under subsection (2).

71. Under subsection (3), any such order may include amendments to primary or subordinate legislation of any part of the United Kingdom. If the order makes amendments to primary legislation it must be made by the affirmative parliamentary procedure; otherwise the power is subject to the negative procedure.

72. Subsection (4) brings into effect Schedule 7 (Transitional and consequential provision etc).

Section 18 – Orders and regulations

73. This section sets out the arrangements for how Ministers are to exercise their delegated powers. Section 18 determines which powers, exercisable by the Secretary of State or Lord Chancellor under the Act, require which parliamentary procedure:

- affirmative procedure is required for:
  - an order under section 8 and paragraph 9(8) of Schedule 6 to allow marriage of same sex couples according to the rites of the Church in Wales;

- regulations made for the first time under section 9 setting out arrangements for the conversion of civil partnerships;
- an order under section 14;
- an order under section 16;
- an order amending an Act of Parliament under section 17(1) or (2);
- an order under paragraph 1(1) of Schedule 2, which provides for a marriage of a same sex couple under the law of England and Wales to be treated as a civil partnership in Scotland, or an order made under paragraph 1(2) modifying or disapplying the provisions of an order made under paragraph 1(1);
- an order under paragraph 2 of Schedule 2 modifying or disapplying the effect of paragraph 2(1) (which provides that marriages of same sex couples are treated as civil partnerships under the law of Northern Ireland);
- an order under paragraph 27 of Schedule 4, to make contrary provisions to the general proposition in the Act which makes marriage in law have the same effect in relation to marriages of same sex couples as it does for marriages of opposite sex couples.

- negative procedure is required for:
  - regulations under section 9 making provision in relation to the conversion of civil partnership into marriage, other than on the first exercise of this power;
  - an order under section 17(1) or (2) which does not amend an Act of Parliament.

74. Subsection (4) provides for orders and regulations under the Act to make different provision for different purposes; and to make transitional, transitory, saving or consequential provision.

75. Subsection (5) enables the Secretary of State to delegate the making of certain regulations to the Registrar General, but only where the regulations are to be made under section 9 (Conversion of civil partnership to marriage) or under section 14(4) (in relation to marriage by belief organisations).

76. Subsection (6) provides that such provision may not enable the Registrar General to require a fee to be paid or set the amount for such a fee. The Secretary of State may not delegate his or her regulation-making power to the Registrar General unless he or she is satisfied that it is needed in connection with the administrative functions of the Registrar General.

77. Subsections (7) and (8) provide that the default parliamentary procedure for regulations made by the Registrar General is the negative procedure, but the Secretary of State may make alternative provision in the order made under subsection (5).

78. Subsection (10) provides that the power to amend legislation by secondary legislation includes the power to repeal or revoke legislation.

79. Subsection (11) requires the Secretary of State or Lord Chancellor to obtain the consent of the Scottish Ministers or the Department of Finance and Personnel in Northern Ireland before making any orders or regulations amending legislation within the devolved areas of competence of the Scottish Parliament or the Northern Ireland Assembly.

Section 19 – Interpretation

80. Section 19 defines various expressions used in the Act:

- "primary legislation",

- "subordinate legislation",
- "England and Wales legislation",
- "Northern Ireland legislation",
- "Scottish legislation",
- "UK legislation",
- "existing England and Wales legislation",
- "new England and Wales legislation",
- "registrar",
- "Registrar General"
- "superintendent registrar".

Section 20 – Extent

81. The extent of the Act's provisions is primarily covered in paragraph 16 above. In addition, amendments, revocations or repeals made by the Act have the same extent as the provision being amended, revoked or repealed. Any amendments to the Social Security Contributions and Benefits Act 1992, the Pension Schemes Act 1993, the Human Fertilisation and Embryology Act 2008 and the review of civil partnership only extend to England and Wales.

Section 21 – Short title and commencement

82. Sections 15, 16 and 21 came into force on 17 July 2013 - the day on which the Act received Royal Assent. Any other provision will come into force by order of the Secretary of State.

Schedule 1 – Registration of buildings etc

Introduction

83. Schedule 1 inserts provisions into the Marriage Act to deal with the details of registering certified places of worship for marriage of same sex couples according to religious rites and usages; appointing authorised persons for that purpose; and cancelling registration, along with powers for the Registrar General to make further detailed procedural regulations.

Registration of buildings

84. Paragraph 2 of Schedule 1 ("Registration of buildings") inserts new sections 43A to 43D into the Marriage Act.

85. New section 43A deals with the procedures for registration of buildings as places where same sex couples can get married. This can be additional to, or separate from, registration as a place where a man and a woman can get married.

- As with registration under section 41 (for marriages between a man and a woman), a building cannot be registered for marriage of same sex couples unless it has been certified as a place of worship (subsection (1)). Part of a building may be registered (subsection (6)).
- The application is made, as with applications to register a building for marriage of opposite sex couples, by the proprietor or trustee of the building to the superintendent registrar for the local registration district (subsection (2)).

- The application must be accompanied by a certificate demonstrating the consent of the relevant governing authority, a copy of that consent and (if the building is not already registered for marriage (of opposite sex couples) under section 41 of the Marriage Act), a certificate of use for religious worship (subsection (3)). Certificate of use for religious worship is defined in subsection (7); it must be dated not earlier than one month before the application is made and must be signed by at least twenty householders who are members of the regular congregation who want the building to be used as a place for same sex couples to get married.
- The local registrar must send the application with the certificates to the Registrar General, who must register the building (subsections (4) and (5)).

86. New section 43B deals with the appointment of authorised persons for the purpose of marriages of same sex couples. There are already authorised persons for marriages of opposite sex couples: for example, a warden, verger or other church official (he or she could be, but is not normally, a member of the clergy) who is appointed by the local church to keep its marriage register and to be present at the marriage and ensure the marriage certificate is signed and an entry made in the marriage register on behalf of the local registrar. There does not have to be an authorised person for each registered building, but if there is not, the registrar must be present at the marriage and ensure the certificates are signed and an entry made in the register.

87. New section 43B enables the trustees or governing body of the religious building to appoint an authorised person for marriages of same sex couples (subsection (1)) and, if they do so, requires that they inform the Registrar General and local superintendent registrar (subsection (2)). This is the same process as for religious marriage ceremonies currently. If there is already an authorised person for the building, it will be open to the governing body or trustees to appoint that same person for marriages of same sex couples, or a different person.

88. Where the building is not already registered under section 41, authorised persons can only be appointed after one year following registration under new section 43A, so as to enable the registrar to oversee the initial transition to solemnizing and registering marriages (subsections (3) to (6)). This also applies to new registrations under section 41, where the building is not already registered under new section 43A.

89. Quakers (Society of Friends) and people professing the Jewish religion can carry out marriages in places that are not registered. Therefore they do not now, and will not under the Act, need to appoint authorised persons (subsection (8)).

90. New section 43C enables a building's registration for the conduct of marriages of same sex couples to be cancelled. The procedure for doing so is similar to that for applying for registration. Under subsection (4) of new section 43C, where a building is shared new sections 44A to 44C of the Marriage Act (inserted by paragraph 3 of this Schedule) apply and enable a religious organisation to cancel its registration without the agreement of other sharers.

91. New section 43D gives the Secretary of State a power to make further regulations regarding the procedures to be followed for applications to register buildings for marriages of same sex couples, applications for the registration of buildings to solemnize marriages of both same sex and opposite sex couples, the procedures for appointment of authorised persons and the cancellation of registrations, including procedures to be followed by superintendent registrars and for payment of fees. The use of this power will be subject to the negative parliamentary procedure.

Shared buildings

92. Paragraph 3 ("Shared buildings") inserts new sections 44A to 44D into the Marriage Act. New section 44A sets out procedures for the registration for the purpose of religious marriage ceremonies of same sex couples of certified places of worship

which are shared between more than one religious organisation under a formal sharing arrangement under the Sharing of Church Buildings Act 1969 or otherwise covered by that Act (such as university or hospital chapels). In particular, section 44A provides that agreement to registration is required from the governing authority of each of the organisations which share the building. All the sharing organisations do not need to consent to solemnize marriages of same sex couples themselves, but need to agree to the building being used to solemnize such marriages. A power is included for the Secretary of State to make regulations in relation to this section.

93. New section 44B provides for the cancellation of the registration for the conduct of marriages of same sex couples of buildings shared under a formal sharing arrangement. Any application for cancellation must be made in accordance with new section 43C but can be made either by the proprietor or trustee of the building or by the governing authority of any of the sharing churches. If the application is made by a governing authority, it must be accompanied by a written confirmation that the organisation making the application is the relevant governing authority of that religion. The consent of all sharing churches is not required. A power is included for the Secretary of State to make regulations in relation to this section.

94. New section 44C contains a power for the Secretary of State to make regulations about the registration, cancellation of registration and use of certified places of worship which are used by more than one religious organisation but are not subject to a formal sharing arrangement under, or otherwise dealt with in, the Sharing of Church Buildings Act 1969.

95. New section 44D provides definitions of terms used in sections 44A to 44C such as "sharing agreement" and "shared building". It also provides power for the Secretary of State to make regulations about the registration of shared buildings, and the use of shared premises for marriage of same sex couples more generally. In particular, the regulations may deal with the solemnization of marriages by Quakers or marriages according to the Jewish religion in shared buildings (including consents for registration and cancellation of registrations in these cases). Under subsection (8) of this new section, the affirmative procedure is required for use of any of the powers relating to shared buildings.

Schedule 2 – Extra-territorial matters

Part 1 – English and Welsh marriages of same sex couples: treatment in Scotland and Northern Ireland

96. Paragraph 1 gives the Secretary of State a power to make an order, after obtaining the consent of the Scottish Ministers, to provide that marriages of same sex couples solemnized under the law of England and Wales are to be treated under the law of Scotland as civil partnerships. This power could be used in the event that, when marriage of same sex couples becomes lawful in England and Wales, it is not lawful in Scotland. Without legal recognition of their status, a same sex couple who married in London, for example, and subsequently moved to Glasgow would not be recognised as being in any legal relationship.

97. The Secretary of State may also make a supplementary order to vary or undo this treatment as a civil partnership in particular circumstances. An order for treating marriages of same sex couples solemnized in England and Wales as civil partnerships cannot be made if marriage of same sex couples has become lawful in Scotland. However, an order that has been made will continue to be valid even if marriage of same sex couples becomes lawful in Scotland, though at that point the order could be revoked. This means that couples treated as civil partners during the period between this Act coming into force and any Scottish legislation coming into force would not retrospectively lose rights acquired as civil partners during that period. Any order made

under the Act which would otherwise be within the legislative competence of the Scottish Parliament will be subject to the consent of Scottish Ministers.

98. Paragraph 2 provides that marriages of a same sex couples solemnized under the law of England and Wales are to be treated under the law of Northern Ireland as civil partnerships. This is to deal with the situation that, though marriage of same sex couples will be lawful in England and Wales, it is not lawful in Northern Ireland. Without legal recognition of their status, a same sex couple who married in London, for example, and subsequently moved to Belfast would not be recognised as being in any legal relationship.

99. The Secretary of State may also make a supplementary order to vary or undo this treatment as a civil partnership in particular circumstances. Any order made by the Secretary of State or Lord Chancellor under the Act which would otherwise be within the legislative competence of the Northern Ireland Assembly will be subject to the consent of the Department of Finance and Personnel.

Part 2 – Marriage treated as civil partnership: dissolution, annulment or separation

100. Paragraph 4 provides that where a marriage of a same sex couple is treated as a civil partnership in Scotland or in Northern Ireland and the civil partnership is subsequently dissolved or annulled or an order is made for the separation of the civil partners, then the marriage itself will also automatically be ended or the parties will have a judicial separation under the law of England and Wales.

Example

- A same sex couple gets married in London and later moves to Edinburgh. Their relationship will be treated as a civil partnership in Scotland. If their civil partnership was subsequently dissolved by a court in Scotland, the effect of such an order will be recognised under the law of England and Wales as if the couple had divorced – their marriage will be ended. They do not have to return to England and Wales in order for this to happen.

Part 3 – England and Wales: "overseas relationships" in Civil Partnership Act 2004

101. Part 5 of the Civil Partnership Act defines the term "overseas relationship" and sets out the circumstances in which a same sex couple who have registered a marriage or civil union overseas are to be treated as having formed a civil partnership under UK law. Paragraph 5 takes into account the fact that the Act makes marriage of same sex couples possible in England and Wales and as a consequence overseas marriages of same sex couples will be treated as marriages under the law of England and Wales.

Examples

- If a same sex couple who were married in Belgium move to England, their relationship will be treated as a marriage in England and Wales.
- If the same sex couple who married in Belgium subsequently move to Northern Ireland, their relationship will be treated as a civil partnership there, as marriage of same sex couples is not possible under Northern Ireland law and so overseas marriages of same sex couples will continue to be treated as civil partnerships in Northern Ireland under the Civil Partnership Act.

Schedule 3 – Interpretation of legislation

102. Schedule 3 makes further provision about interpretation of references to marriages in existing (Part 1) and new (Part 2) legislation in England and Wales, in accordance with

the principle set out in section 11 that marriage in law has the same effect in relation to same sex couples as to opposite sex couples.

Part 1 – Existing England and Wales legislation

103. Part 1 sets out details of how particular terms used in existing legislation in England and Wales are to be read once marriage of same couples becomes possible. The particular terms mentioned in paragraph 1 are references to a marriage, a married couple or married person in existing legislation in England and Wales; these are to be read as also referring to a marriage of a same sex couple, married same sex couples or to a person married to someone of the same sex.

104. Under paragraph 1(2), such references are also to be read across to, for example, cases where a marriage has ended. A reference to a person as a widow would be read as including a reference to a woman whose marriage to another woman ended with the other woman's death, for example.

105. Paragraph 1(3) ensures that existing England and Wales legislation will be interpreted in accordance with paragraphs 1(1) and (2) no matter what language it uses in making reference to any of the relevant concepts.

106. Paragraph 2 particularly deals with references to couples living together as if married; these are to be read as also referring to a person who is living with someone of the same sex as if they are married.

107. Paragraph 3 deals with legislation where there is existing provision which deals differently with a man and a woman living together as if married, and a same sex couple living together as if civil partners. The effect of this paragraph is to preserve the current effect for same sex couples despite the introduction of marriage of same sex couples. In other words, the current distinction is maintained by which an unmarried opposite sex couple are treated as if married, while an unmarried same sex couple not in a civil partnership are treated as if in a civil partnership.

108. Paragraph 4 ensures that the terms specified in Part 1 of Schedule 3 are not the only terms whose meaning will change once marriage of same sex couples becomes possible.

Examples

- Section 105(1) of the Children Act 1989, as amended, defines the meaning of "child of the family" for the purposes of that Act:

  ""child of the family", in relation to parties to a marriage, or to two people who are civil partners of each other, means –

  (a) *a child of both of them, and*

  (b) *any other child ... who has been treated by both of them as a child of their family;*

  The effect of paragraph 1(1)(a) of Schedule 3 means that the reference to "parties to a marriage" is to be interpreted now as including a reference to a marriage of a same sex couple.

- Section 144(4) of the Adoption and Children Act 2002 defines the meaning of "a couple" for the purposes of that Act:

  "In this Act, a couple means –

  (a) *a married couple, or*

  ((aa) *two people who are civil partners of each other, or*

((b) *two people (whether of different sexes or the same sex) living as partners in an enduring family relationship.*

Paragraph 1(1)(b) allows for the reference here to a married couple now to include a married same sex couple.

- Section 2(1) of the Offices, Shops and Railway Premises Act 1963 as amended states that: "This Act shall not apply to any premises to which it would, apart from this subsection, apply, if none of the persons employed to work in the premises is other than the husband, wife, civil partner .....of the person by whom they are so employed." The terms "husband" and "wife" here refer to a person who is married for the purposes of paragraph 1(1)(c) of Schedule 3. This means that "husband" here will be read as including a man or a woman in a marriage of a same sex couple, as well as a man married to a woman. In a similar way, "wife" will be read as including a woman married to another woman or a man married to a man. The result is that this section is to be read as including both male and female spouses in marriages of same sex couples.

Part 2 – New England and Wales legislation

109. Part 2 governs how new legislation made after the passing of this Act is to be interpreted. It sets out the meanings of specific words relating to marriage (such as "husband" and "wife"). It reflects the main principle of the Act, which is to put marriage of same sex couples on an equal footing with marriage of opposite sex couples. This will ensure that gender-specific terms such as "husband" keep their gender-specific effect.

110. It should be noted that in Part 7 of Schedule 4, paragraph 27 provides a power for the Secretary of State to modify or disapply the provisions of Schedule 3 in specified circumstances.

Example

- The term "husband" will in future legislation include a man who is married to another man (but not a woman married to another woman); and "wife" will include a woman who is married to another woman (but not a man married to another man) unless specific alternative provision is made.

Schedule 4 – Effect of extension of marriage: further provision

Part 1 – Private legal instruments

111. This provision means that the introduction of marriage of same sex couples will not affect the meaning of any marriage-related reference in documents, such as wills, deeds and documents governing charities, drawn up prior to section 11 coming into force. Such references will be understood only in terms of marriage of opposite sex couples.

112. In future, after this Act comes into force, a reference to marriage in any new document may be understood as including marriage of same sex couples (depending on the precise terminology of the document).

Examples

- If a person has made a bequest to someone, before the Act comes into force, which is conditional on that individual becoming or being married, marriage will refer to marriage of opposite sex couples only.

- If the governing document of a charity, made before the Act comes into force, stipulates that the organisation will provide for someone who is a widow, that reference will only be to a woman who had previously been married to a man.

Part 2 – Presumption on birth of child to married woman

113. Paragraph 2 makes clear that the common law presumption, that a child born to a woman during her marriage is also the child of her husband (often referred to as "the presumption of legitimacy"), is not extended to marriages of same sex couples by section 11. Therefore, where two women are married to each other and one of the parties to that marriage gives birth to a child, the other party will not be presumed to be the parent of that child by virtue of the common law presumption. There may be other ways in which the party to the marriage who does not give birth to the child is treated in law as the parent (for example, if that woman is treated as a parent as a result of the amendment made by paragraph 40 of Schedule 7 to this Act to section 42 of the Human Fertilisation and Embryology Act 2008), but in all such cases it is not the common law presumption that treats her as the parent of that child.

Examples

- A woman, who is married to a man, gives birth to a child. Her husband is presumed to be the father of that child by virtue of the common law presumption.
- A woman, who is married to another woman, has a child by way of artificial insemination. Her wife is not presumed to be the parent of that child by virtue of the common law presumption. Under section 42 of the Human Fertilisation and Embryology Act 2008 her wife is treated as the parent of that child, unless it is shown that she did not consent to the insemination.
- A woman, who is married to another woman, has a child by way of natural conception with a man. Her wife is not presumed to be the parent of that child by virtue of the common law presumption. The man is the father of that child.

Part 3 – Divorce and annulment of marriage

114. Paragraph 3 adds a new subsection 1(6) in the Matrimonial Causes Act 1973. Section 1 of that Act sets out various facts for proving that a marriage has broken down irretrievably (the ground for divorce), including in subsection 1(2) (a) that one of the parties to the marriage has committed adultery and the other finds it intolerable to live with that party. New subsection 1(6) maintains the existing definition of adultery and provides that only conduct between one party to the marriage and a person of the opposite sex may constitute adultery. This applies to both opposite sex and same sex couples.

115. Paragraph 4 amends section 12 of the Matrimonial Causes Act 1973. The effect of this amendment is that non-consummation (either by reason of incapacity or wilful refusal) cannot be a ground on which a marriage of a same sex couple is voidable. The provisions for opposite sex couples remain unaltered.

Examples

- A man married to a woman has an affair with another man. His wife cannot cite adultery as a fact for divorce, but can rely on unreasonable behaviour instead.
- A man married to another man has an affair with a woman. His husband can cite adultery and that he finds it intolerable to live with his husband as a fact for divorce.
- A man married to another man refuses to have sexual intercourse with his husband. His husband cannot apply for annulment of the marriage because of his wilful refusal to consummate. However, after one year of marriage, he may apply for divorce because his husband has behaved in such a way that he cannot reasonably be expected to live with him.

Part 4 – Matrimonial proceedings

116. Same sex couples who marry in England and Wales but remain or become habitually resident or domiciled in another country may not be able to end their marriage in that country if it does not recognise the existence of the relationship. Part 4 therefore amends the Domicile and Matrimonial Proceedings Act 1973 to provide a "jurisdiction of last resort" so that those same sex couples who are unable to divorce or obtain other matrimonial orders in the country which would normally have jurisdiction are able to have their case heard in the courts in England and Wales. "Jurisdiction" means a court's authority to deal with the case. The courts in England and Wales will be able to assume jurisdiction if the couple were married in England or Wales and where it is the interests of justice to do so.

117. Paragraph 6 amends section 5 of the Domicile and Matrimonial Proceedings Act 1973 to set out which provisions in respect of jurisdiction in matrimonial causes do not apply to marriages of same sex couples, which are instead dealt with in Schedule A1. It also amends section 5 to provide that Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973, which relates to stays of proceedings, will apply to marriages of opposite sex and same sex couples. Paragraph 7 amends section 6 of that Act to insert reference to Schedule A1. Paragraph 8 inserts Schedule A1 to that Act. Paragraph 1 of Schedule A1 sets out the jurisdiction of the court in proceedings for orders relating to the ending of a marriage (divorce, judicial separation, nullity of marriage or because one of the couple is dead) and orders relating to declarations of validity.

118. Paragraph 2 of Schedule A1 provides that the court is able to deal with divorce, judicial separation and nullity cases either (a) where the court has jurisdiction because of regulations made under paragraph 5 of Schedule A1 (see below), or (b) when no court has that jurisdiction and either of the married same sex couple is domiciled in England and Wales when the case starts, or (c) when the same sex couple married under the law of England and Wales, no court has the paragraph 5 jurisdiction and it appears to the court in the interests of justice for it to deal with the case. In nullity cases the court additionally has jurisdiction if either of the couple died before the case started and was domiciled in England and Wales on the date of death or had been habitually resident in England and Wales throughout the year ending with the date of death.

119. The court also has jurisdiction to deal with divorce, judicial separation or nullity for the same marriage when proceedings are pending under sub-paragraphs (1) or (2).

120. Paragraph 3 of Schedule A1 provides that the court has jurisdiction to deal with an application by one of a couple for an order which ends their marriage on the ground that their spouse is dead, provided that at the time the application was made the High Court did not have jurisdiction under the Presumption of Death Act 2013 to hear an application for a declaration that the applicant's spouse is presumed dead, the two people concerned married under the law of England and Wales and it appears to the court to be in the interests of justice to deal with the case.

121. Paragraph 4 of Schedule A1 says the court has jurisdiction to deal with an application for a declaration of validity if either party to the marriage concerned is domiciled in England and Wales on the date the case starts, was habitually resident in England and Wales throughout the year before the date the case starts, or died before that date and at death was either domiciled in England and Wales or had been habitually resident in England and Wales throughout the year ending with the date of death, or the two people concerned married under the law of England and Wales and it appears to the court to be in the interests of justice to deal with the case.

122. Paragraph 5 of Schedule A1 enables the Lord Chancellor to make regulations about the jurisdiction of the courts to deal with divorce, judicial separation and nullity cases and about the recognition of such orders for a married same sex couple. These regulations would apply where one of the couple: is or has been habitually resident in a Member State of the European Union (EU), or is an EU national, or is domiciled in a part of

the UK or the Republic of Ireland. The regulations may correspond with the terms of Council Regulation (EC) No 2201/2003 (known as Brussels IIa) on jurisdiction, recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility. Brussels IIa deals with marriage of opposite sex couples. The provisions on recognition of judgments can apply retrospectively. A statutory instrument containing these regulations will be subject to the affirmative resolution procedure.

123. Paragraph 6 of Schedule A1 sets out the meaning of "declaration of validity" in that Schedule as: a declaration as to the validity of a marriage, a declaration as to whether a marriage existed on a particular date, or a declaration as to the validity of matrimonial orders obtained outside England and Wales.

124. Paragraph 10 of Schedule 4 to the Act makes transitory provision to ensure that the provisions on the court's jurisdiction to hear presumption of death proceedings will function under section 19 of the Matrimonial Causes Act 1973 if this Act were to come into force before the entry into force of the Presumption of Death Act 2013 and until the Presumption of Death Act 2013 comes into force.

Part 5 – State pensions

125. Part 5 makes provision about a person's entitlement to state pension based on a current or deceased spouse's or civil partner's National Insurance record. This entitlement is payable by way of a "Category B pension" under the Social Security Contributions and Benefits Act 1992.

126. Under section 48A of that Act, a married person or civil partner may be entitled to a lower-rate basic state pension based on the spouse's or civil partner's National Insurance record while the spouse or partner is alive, and up to a full basic pension and a proportion of the spouse's or civil partner's additional (earnings-related) state pension after their death. However, for married men and civil partners, entitlement is restricted to those whose wives or partners were born on or after 6 April 1950. Paragraph 11(1) replicates this restriction for a person who is married to a person of the same sex. However, paragraph 11(2) provides that the restriction does not apply to a woman married to another woman whose spouse was her husband immediately before obtaining a gender recognition certificate. In this situation, she would retain entitlement to state pension based on her spouse's National Insurance contributions, even if the latter was born before 6 April 1950. Paragraph 11(3) amends subsection (2ZA) of the Social Security Contributions and Benefits Act 1992, which defines which contribution condition the person's spouse is required to satisfy depending on when he or she reaches state pension age. The amendment clarifies that the condition applicable to a person who reached state pension age before 6 April 2010 can be relevant only where the spouse is a man married to a woman or (as provided by new (2ZA) and (2ZB)) had been born a man who would have reached pension age in her birth gender before that date.

Examples

- Sandra (born 1949) and Mary (born 1951) get married. Mary only came to live in the UK in her forties and had built up only 50% of a full basic state pension, worth £55.07 a week at current rates, by the time she reached state pension age in March 2013. This is £10.93 less than the full standard rate of basic pension for a married person or civil partner (£66). As Sandra was born before 6 April 1950, when the couple marry Mary will not be able to have her basic state pension increased to £66 using Sandra's National Insurance record.

- Stephen (born in 1949) and Michelle (born 1951) married in 1980. Michelle did not return to work after having their children and is entitled to only 50% of a full basic state pension on her own contribution record. When Stephen qualifies for state pension in 2014, Michelle will be able to have her basic state pension increased to £66. Stephen (now known as Stephanie) is granted a full gender recognition

certificate, and the couple remain married. Although Stephanie was born before 6 April 1950, Michelle will remain entitled to the £10.93 top-up she receives from Stephanie's contributions as this is what she would have been entitled to had Stephanie not obtained a gender recognition certificate.

127. Under section 48B of the Social Security Contributions and Benefits Act 1992, a spouse or civil partner who is widowed over state pension age[1] may be entitled to a Category B pension comprising basic pension plus a proportion of the deceased's additional (earnings-related) state pension. Widowers and surviving civil partners cannot qualify under this provision if they reached state pension age before 6 April 2010. Instead, they may qualify under section 51 (see below), provided their late wife or partner died when also over state pension age. The practical effect of this restriction is now limited to instances where the widower or surviving civil partner reached state pension age before 6 April 2010 and the deceased spouse or partner dies while still under state pension age. The restriction, in relation to widowers, is made by paragraph 3(3) of Schedule 4 to the Pensions Act 1995, which will be read as applying to widowers of marriages of same sex couples by virtue of section 11 of this Act. Paragraph 12(1) of Schedule 4 applies an equivalent restriction to women married to women. However, paragraph 12(2) exempts from this restriction women whose female spouses were formerly their husbands. Paragraph 12(3) makes provision corresponding to that made by paragraph 11(3) relating to the applicable contribution condition to be met by the deceased spouse.

128. As noted in the previous paragraph, section 51 of the Social Security Contributions and Benefits Act 1992 provides a Category B pension for a widower or surviving civil partner who reached state pension age before 6 April 2010 and is widowed when both members of the couple are over state pension age. Section 51 does not apply to widowers or civil partners who reach pension age on or after 6 April 2010, as that entitlement is picked up by either section 48A or 48B. Paragraph 13(2) of Schedule 4 inserts a new subsection (1ZA) into section 51 of that Act, which extends it to include the surviving spouse of a marriage of a same sex couple, so that it may provide a Category B pension where the survivor's pension age is before 6 April 2010 and both are over pension age at the date of widowhood. Paragraph 13(5) and (6) provide that this does not apply to surviving spouses who reached pension age on or after 6 April 2010 or to women whose female spouses were formerly their husbands as they will qualify under either section 48A or 48B.

129. Apart from the above elements of derived entitlements, a surviving spouse or civil partner may also be entitled to half the deceased's graduated retirement benefit (GRB) – a form of earnings-related pension that could be accrued between 1961 and 1975. Widowers and surviving civil partners who reached state pension age before 6 April 2010 may inherit GRB only if both parties are over state pension age when the spouse or civil partner dies. The provisions for GRB inheritance are in section 37 of the National Insurance Act 1965. Section 62 of the Social Security Contributions and Benefits Act 1992 provides the powers to amend the GRB provisions. Paragraph 14(2) of Schedule 4 inserts new powers into section 62 to enable regulations to be made extending section 37 of the National Insurance Act 1965 to men and their late husbands and to women and their late wives on the same terms as currently apply to widowers and surviving civil partners. Subsections (3) and (4) have the effect that a woman who was married to a transsexual woman remains entitled to half the GRB of the deceased without restriction – as if her spouse had not changed legal gender.

Examples

- Teresa (born in 1949) and Angela (born in 1954) get married. Angela would have reached state pension age in 2020 but she dies in 2019. She had built up £20 additional (earnings-related) state pension in the current state pension scheme.

1 Section 48B also makes provision for Category B pension for a spouse widowed under state pension age before 9 April 2001. Entitlement to Category B pension for a married person or civil partner widowed under pension age on or after that date is dealt with under section 48BB.

The maximum inheritable amount would be one-half, but as Teresa reached state pension age before April 2010 she will not be entitled to inherit any of Angela's additional state pension. However, under separate rules that apply equally to widows, widowers and surviving civil partners, if her own basic state pension is less than the full rate of £110.15 (at current rates) she may still be able to have this increased up to the full rate, using Angela's contributions[2].

- Sarah (born in 1949) and Richard (born in 1955) married in 1990. Richard (now known as Ruth) is granted a full gender recognition certificate and the couple remain married. However, Ruth dies in 2020, before reaching state pension age in 2021. She had built up £40 additional state pension and £1.50 GRB in the current state pension scheme. Although Sarah reached state pension age before April 2010, she will still be able to inherit half Ruth's additional state pension and GRB, as this is what she would have been entitled to had Ruth not obtained a gender recognition certificate.

130. Adult dependency increases (ADIs) are an increase of state pension that could be awarded under sections 83 to 85 of the Social Security Contributions and Benefits Act 1992 and may be payable to a man in respect of a dependent wife; a wife in respect of a dependent husband; or a person in respect of another adult (not their spouse) who has the care of the pensioner's dependent child. ADIs were abolished from 6 April 2010, but people who were already entitled to an ADI before that date continue to receive it under transitional rules. Under the changes which the Act introduces, a married couple will be able to remain married when one member changes their legal gender. Paragraph 15 provides that an adult dependency increase continues to be payable where the parties to the marriage are still married but no longer husband and wife.

131. Paragraph 16 provides that where a couple have converted their civil partnership to a marriage under section 9 of the Act, this cannot give rise to entitlement to state pension by virtue of being treated as married in the period preceding the conversion.

Part 6 – Occupational pensions and survivor benefits

132. Paragraph 18 of Schedule 9 to the Equality Act 2010 provides that it is not discrimination because of sexual orientation to restrict access to a benefit, facility or service that would be available to a person who was married to someone who is in a civil partnership, in relation to rights accrued before 5 December 2005 (the date the Civil Partnership Act came into force). This means that an occupational pension scheme as a minimum only has to provide survivor benefits to civil partners on rights accrued since that date. Paragraph 17 removes the word "married" from sub-paragraph (1) and inserts a new sub-paragraph (1A) into paragraph 18 of Schedule 9 to the Equality Act 2010. This extends the exception so that it also applies to same sex couples in the same way as to civil partners. Sub-paragraph (1A)(c) and (1B) provide that this does not apply to people who were in a marriage with a person of the opposite sex but who are now in a marriage of a same sex couple as a result of one spouse changing legal gender.

Examples

- An example of an employment benefit provided by reference to marital status is an occupational pension scheme which pays benefits to an employee's spouse on the death of the employee, but does not similarly compensate an unmarried employee's partner.

- A scheme which pays out to surviving married partners must also pay out to surviving same sex spouses and surviving civil partners in respect of any employee service since 5 December 2005 (when the Civil Partnership Act came into force).

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2 Under the Government's proposals for reforming the state pension, a person who reaches state pension age before the reforms are introduced in April 2016 will still be able to qualify for the state pension based on the contributions their spouse or civil partner made into the current scheme, under the current rules.

- A member of an occupational pension scheme is married to a person of the opposite sex. The husband or wife changes legal gender and the marriage changes to a marriage of a same sex couple. In this case the survivor would retain the expectation of survivor benefits they would have had in a marriage of an opposite sex couple.

133. Paragraphs 18 to 26 of Schedule 4 amend the Pension Schemes Act 1993 to extend requirements on occupational pension schemes that are or have been contracted out to provide survivor benefits to widows or widowers of a marriage of a same sex couple. In particular, section 17 of the Pension Schemes Act 1993 requires schemes to provide that if the scheme member (the "earner") dies leaving a widow, widower or surviving civil partner, the survivor will be entitled to a guaranteed minimum pension under the scheme. Paragraph 20 of Schedule 4 inserts new subsections (2)(d) and (e) into section 17 and amends subsections (4) to (6) so that the guaranteed minimum pension provisions apply to same sex married partners as they do for civil partners. Section 8(2) of the Pension Schemes Act 1993 defines "guaranteed minimum pension" for the purposes of that Act. Paragraph 19 extends the definition of guaranteed minimum pension to include an earner's surviving same sex spouse's guaranteed minimum.

134. Widows and widowers of marriages of same sex couples will be entitled to any guaranteed minimum pension accrued after April 1988. However, an exception is made for a woman in a marriage of a same sex couple whose spouse was her husband immediately before obtaining a gender recognition certificate - a "relevant gender change case". In such cases widows will be treated like widows of men for the purpose of inheritance of the guaranteed minimum pension.

135. Schemes may convert members' rights to a guaranteed minimum pension into an ordinary scheme pension. Under section 24D of the Pension Schemes Act 1993, the scheme must provide post-conversion benefits that include survivors' benefits. Paragraph 21 amends section 24D to require schemes to provide these survivors' benefits to widows or widowers of marriages of same sex couples. Widows or widowers of marriages of same sex couples will be entitled to the same benefits as surviving civil partners, except as with inheritance of the guaranteed minimum pension where a woman was married to a woman in a relevant gender change case. In these cases a widow will be entitled to a pension of at least half the value of any pension accrued by the earner from April 1978 to April 1997.

136. Section 37 of the Pension Schemes Act 1993 prohibits alterations to the rules of a contracted-out scheme unless the alteration is of a prescribed description and except in prescribed circumstances. Section 37(3) prohibits such alterations by schemes that were formerly contracted-out so long as any person is entitled to receive benefits for the period when the scheme was contracted-out. Section 37(4) limits the application of section 37(3) where the person entitled is a widower or surviving civil partner to only such cases as may be prescribed. Paragraph 22 amends section 37(4) and inserts new subsections (5) and (6) to extend this limitation to include widows and widowers of marriages of same sex couples except for widows in a relevant gender change case.

137. In order to benefit from the exception made for relevant gender change cases, widows will need to produce evidence of their spouse having changed legal gender to support their claim. Paragraph 23 inserts new section 38A (Regulations about relevant gender change cases) into the Pension Schemes Act 1993 to enable regulations to be made to specify the detail of what information may need to be provided or other conditions that may be met before schemes are obliged to treat these widows as if they were widows of marriages of opposite sex couples. Under subsection 38A(3) regulations may also specify what schemes must do if the required information is not provided or the conditions are not met for this special exception to apply.

138. Section 46(1) of the Pension Schemes Act 1993 provides for the reduction of social security benefits where a person is also entitled to a guaranteed minimum pension. Section 47(1) limits the application of section 46(1) in relation to individuals who are

entitled to a guaranteed minimum pension by virtue of being the widower or surviving civil partner of an earner in certain circumstances. Section 47(1) does not make any provision about widows, who are currently provided for under section 46(1). The policy intention is that survivors of marriages of same sex couples be treated in the same manner as surviving civil partners in respect of their guaranteed minimum pension entitlement. Paragraph 24 of Schedule 4 gives effect to this policy by making provision for widows of marriages of same sex couples in section 47(1).

139. Section 84 of the Pension Schemes Act 1993 makes provision about which method of revaluation is to be used to revalue pension benefits. Subsection (5) is amended by paragraph 25 of Schedule 4 to make reference to the guaranteed minimum of surviving same sex spouses.

140. Schedule 3 of the Pension Schemes Act 1993 makes further provision about each of the methods of revaluing accrued pension benefits. Paragraph 1(1E) defines "the accrued benefit" for the purposes of paragraph 1, which provides further detail on the final salary method of revaluation. Sub-paragraph (b) is amended by paragraph 26 of Schedule 4 to make reference to the guaranteed minimum of surviving same sex spouses.

Examples

- A survivor of a marriage of a same sex couple makes an application to a pension scheme for a survivor benefit. The deceased was a member of a contracted-out pension scheme with a guaranteed minimum pension. The scheme is required to pay a survivor benefit of half the guaranteed minimum pension based on accruals back to April 1988.
- A widow who was married to a woman in a relevant gender change case makes an application to a pension scheme for a survivor benefit. The deceased was a member of a contracted-out pension scheme with a guaranteed minimum pension. If the widow can provide the scheme with the required evidence that her spouse was her husband immediately before obtaining a gender recognition certificate, the scheme will be required to pay a survivor benefit of half the guaranteed minimum pension based on accruals back to April 1978.

Part 7 – Provisions which limit equivalence of all marriages etc

141. Certain provisions of the Act (referred to in these notes as the "equivalence provisions") have a wide general effect. These provisions are:

- section 11(1) and (2) (which provide for marriage to have the same effect in law in relation to same sex couples that it has in relation to opposite sex couples and for the law of England and Wales to have effect accordingly) and Schedule 3 (which supports section 11(1) and (2) by making specific provision about the interpretation of legislation);
- section 9(6)(b) (which provides that, where a marriage is converted into a civil partnership, the marriage has effect as if it had subsisted since the date when the civil partnership was formed).

142. In some cases, the wide general effect of the equivalence provisions goes too far, and so would produce results which are not in line with the policy. It is therefore necessary to ensure that the wide general effect of the equivalence provisions does not apply in particular circumstances, or applies in a different way from normal.

143. Some of these cases are already dealt with in the preceding provisions of Schedule 4. Other cases like this may be dealt with by an order under paragraph 27(3). The legislation which deals with cases like this is referred to as "contrary provision".

144. Sub-paragraphs 27(1) and (2) ensure that, where cases like this are dealt with by contrary provision, that provision overrides the wide general effect of the equivalence provisions.

Examples

- An Act of Parliament provides that a benefit is to be given to a widow who meets prescribed requirements. The effect of section 11(1) and (2), combined with Schedule 3, means that the benefit would also be available to a person in a marriage of a same sex couple (of either sex) whose spouse had died. However, a man who was married to a woman and whose wife had died would not be entitled to the benefit. In this instance the equivalence provisions go too far, and the Act conferring the benefit could be excluded from their effect by the making of contrary provision.

Schedule 5 – Change of gender of married persons or civil partners

Part 1

145. Part 1 of Schedule 5 makes changes to the Gender Recognition Act 2004 (the "Gender Recognition Act"). The Gender Recognition Act enables transsexual people to change their legal gender by applying for a gender recognition certificate under section 1 of that Act. The issue of a full gender recognition certificate enables recipients to be recognised for all legal purposes in their new gender ("the acquired gender"). Under the previous law, transsexual people who are married or in a civil partnership must end their marriage or civil partnership before a full gender recognition certificate can be issued. This is achieved by the Gender Recognition Panel issuing an interim gender recognition certificate to married applicants and applicants in civil partnerships, which causes the marriage or civil partnership to become voidable. Applicants then have six months from the date of issue of the interim gender recognition certificate to apply to the court to end their marriage or civil partnership. Once a marriage or civil partnership has been annulled (or a divorce or dissolution has occurred in Scotland) the court can issue a full gender recognition certificate.

146. Part 1 of this Schedule amends the Gender Recognition Act to enable an existing marriage registered in England and Wales or outside the UK ("protected marriage" defined in paragraph 14 as a marriage under the law of England and Wales, or a marriage under the law of a country or territory outside the United Kingdom) to continue where one or both parties change their legal gender and both parties wish to remain married. It also amends that Act to enable a civil partnership ("protected civil partnership" defined in paragraph 14 as a civil partnership under the law of England and Wales) to continue where both parties change their legal gender simultaneously and wish to remain in their civil partnership.

147. Paragraph 2 inserts new subsections (6A), (6B) and (6C) which amend the evidence requirements in section 3 of the Gender Recognition Act. At present, section 3(6)(a) of that Act requires transsexual people who apply to the Gender Recognition Panel for a gender recognition certificate to submit a statutory declaration as to whether they are married or in a civil partnership. This enables the Gender Recognition Panel to determine whether to issue a full gender recognition certificate (for people who are not married or in a civil partnership) or an interim certificate (for people who are married or in a civil partnership).

148. New subsection (6A) requires married applicants to include in their statutory declaration an additional declaration as to where their marriage was registered. This will enable the Gender Recognition Panel to determine whether the marriage is a protected marriage. Where the marriage is a protected marriage, new subsection (6B) requires an application to contain a declaration by the applicant's spouse that he or she consents to the marriage continuing after the issue of a full gender recognition certificate (a "statutory declaration of consent"), or a statutory declaration by the applicant that his or her spouse has not made such a declaration. If the application contains a statutory

declaration of consent by the applicant's spouse, new subsection (6C) requires the Gender Recognition Panel to inform the spouse that an application has been made.

149. Paragraph 3 replaces existing subsections (2) and (3) of section 4 of the Gender Recognition Act (which provides for the issue of interim and full gender recognition certificates following an application) and inserts new subsections (3A) and (3B) into that section. The effect of these amendments is to enable a full gender recognition certificate to be issued:

- to single applicants (new subsection (2)(a));
- to applicants who are party to a protected marriage and the applicant's spouse has issued a statutory declaration of consent (new subsection (2)(b)); and
- to applicants who are party to a protected civil partnership and the Gender Recognition Panel has decided to issue the other party to the civil partnership with a full gender recognition certificate (new subsection (2)(c)).

150. Interim gender recognition certificates will be issued:

- to applicants in protected marriages if the applicant's spouse has not consented to the marriage continuing (new subsection (3)(a));
- to applicants in non-protected marriages (new subsection (3)(b));
- to applicants in protected civil partnerships where the other party to the civil partnership has not made an application for a gender recognition certificate at the same time as the applicant, or the other party has made such an application but the Panel has decided not to issue a full gender recognition certificate to him or her (new subsections (3)(c) and (3)(d)); and
- to applicants in non-protected civil partnerships (new subsection (3)(e)).

151. New subsection (3A) requires the Gender Recognition Panel to notify an applicant's spouse where they issue a full gender recognition certificate to the applicant. New subsection (3B) provides that section 4 of the Gender Recognition Act is subject to new section 5B (inserted into that Act by paragraph 5 of this Schedule).

152. Paragraph 4 inserts new sections 4A and 4B into the Gender Recognition Act.

153. New section 4A provides for two situations ("Case A" and "Case B"). Case A provides for the situation where an applicant is in a protected marriage but his or her spouse has not issued a statutory declaration of consent to the marriage continuing. If the applicant's spouse changes his or her mind before the marriage is annulled and wishes the marriage to continue, subsection (2) provides that the applicant can apply to the Gender Recognition Panel for a full gender recognition certificate. The Panel can only issue a full gender recognition certificate to the applicant following such an application if they are satisfied that the following conditions are met:

- an interim gender recognition certificate has been issued to the applicant (subsection (2)(a));
- the applicant was a party to a protected marriage at the time the interim gender recognition certificate was issued (subsection (2)(b));
- the applicant is in a protected marriage (subsection (2)(c)); and
- the applicant's spouse consents to the protected marriage continuing (subsection (2)(d)).

154. If these conditions are not met, the Gender Recognition Panel will reject an application for a full gender recognition certificate (subsection (4)). Subsection (5) sets a time limit

for an application under Case A. The time limit is six months from the date on which the interim certificate was issued.

155. Case B provides for the situation where an application is made by a civil partner, an interim gender recognition certificate is issued and the couple subsequently decide to convert their civil partnership into a protected marriage under section 9 of this Act. Subsection (3) provides that following a conversion taking place, such applicants can apply for a full gender recognition certificate. The Gender Recognition Panel can only issue a full gender recognition certificate to the applicant if they are satisfied that the following conditions are met:

- an interim gender recognition certificate has been issued to the applicant (subsection (3)(a));
- the applicant was a party to a civil partnership at the time the interim gender recognition certificate was issued (subsection (3)(b));
- the conversion application was made within six months of the date of issue of the interim gender recognition certificate (subsection 3(c));
- the conversion process under section 9 (of this Act) has resulted in the civil partnership being converted into a marriage (subsection (3)(d));
- the applicant is a party to that marriage (subsection (3)(e)); and
- the applicant's spouse consents to the marriage continuing (subsection (3)(f)).

156. If these conditions are not met, the Gender Recognition Panel will reject an application for a full gender recognition certificate (subsection (4)). Subsection (6) sets a time limit for conversion of an interim gender recognition certificate to a full certificate under this section. The time limit is six months from the date when the civil partnership is converted to a marriage.

157. Applications under Case A and Case B require the applicant's spouse to issue a statutory declaration of consent to the marriage continuing (subsection (7)). Applications under Case B must additionally include evidence of the date on which the application for conversion under section 9 was made and evidence that the civil partnership has been converted to a marriage (subsection (8)).

158. Where the Gender Recognition Panel receives an application to issue a full gender recognition certificate in either Case A or Case B, section 4A, subsection (9) requires them to notify the applicant's spouse both of the application and also of the issue of the full gender recognition certificate.

159. New section 4B provides for the situation where an applicant has made an application for a full gender recognition certificate under new section 4A but before that application can be determined the applicant's spouse dies. Under the previous law, if the applicant's spouse dies within six months of the interim gender recognition certificate being issued, the applicant can apply for a full gender recognition certificate within six months from the date the death occurred (section 5(2)(b) of the Gender Recognition Act). This section may not be available to applicants if the application has not been determined within the time limit in new section 4A(5) and (6). New section 4B provides that in such cases the applicant can still rely on section 5(2)(b) to apply for a full gender recognition certificate.

160. Paragraph 5 inserts new section 5B into the Gender Recognition Act. If both parties to a protected civil partnership make successful applications to the Gender Recognition Panel, amended section 4(2)(c) of the Gender Recognition Act applies, and both parties will be entitled to full gender recognition certificates. In such cases, new section 5B enables the Gender Recognition Panel to issue full gender recognition certificates to both parties simultaneously, ensuring that the continuity of the civil partnership is not affected by the changes to both parties' legal gender.

161. Paragraph 6 amends section 6 (Errors in certificates) of the Gender Recognition Act. The amendments provide for the situation where the Gender Recognition Panel or court inadvertently issues the wrong gender recognition certificate or issues a gender recognition certificate with incorrect information. New subsection (1) allows the person covered by the certificate or the Secretary of State to apply to the Gender Recognition Panel or court which issued the certificate to issue the correct certificate or to correct information in the certificate.

162. Paragraphs 7 and 8 make consequential amendments to section 7 (Applications: supplementary) and section 8 (Appeals etc) of the Gender Recognition Act. Paragraph 8 also inserts new subsection (5A) into section 8 of that Act. New subsection (5A) enables an applicant's spouse to apply to the court where he or she considers that a full gender recognition certificate has been obtained by his or her spouse fraudulently.

163. Paragraph 9 (1) amends section 10 of the Gender Recognition Act. New subsection (1A) provides that if the Gender Recognition Panel issue full gender recognition certificates to one or both parties in a protected marriage or both parties in a protected civil partnership, the Secretary of State must send a copy of the full gender recognition certificate(s) to the Registrar General for England and Wales.

164. Paragraph 9(2) amends Part 1 of Schedule 3 to the Gender Recognition Act. New paragraph 11A provides the Registrar General of England and Wales with a power to make regulations about the registration of qualifying marriages and civil partnerships (defined as marriages and civil partnerships registered in England and Wales where one or both parties (both parties in relation to civil partnerships) have been issued with full gender recognition certificates). In particular the regulations may provide for the maintenance of separate marriage and civil partnership registers that record details of qualifying marriages and civil partnerships.

165. Paragraph 10 inserts new section 11A into the Gender Recognition Act. Subsection (2) provides that, throughout the United Kingdom, the continuity of a protected marriage registered under the law of England and Wales is not affected by the issuing of full gender recognition certificates to one or both of the parties to the marriage. Despite this provision's United Kingdom extent, this provision does not require the law of Scotland or Northern Ireland to recognise such unions as marriages. The provision merely ensures that for the purposes of the law of England and Wales, there is no break in the continuity of marriages registered in England and Wales which continue following one or both parties obtaining gender recognition. Subsection (3)(a) provides that the continuity of a protected marriage registered under the law of a country outside the United Kingdom is not affected by the issuing of full gender recognition certificates to one or both of the parties to the marriage. However, subsection (3)(b) provides that protected marriages registered under the law of a country outside the United Kingdom are still subject to the law of the country in which they are registered, despite being recognised by the law in the United Kingdom whilst the couple are resident there.

166. Paragraph 11 inserts a new section 11B into the Gender Recognition Act. Section 11B provides that, throughout the United Kingdom, the continuity of a protected civil partnership is not affected by the issuing of full gender recognition certificates to both of the parties to the civil partnership under section 4(2)(c) of that Act.

167. Paragraph 12 has the effect of disapplying section 21(2) to (5) of the Gender Recognition Act (Foreign gender change and marriage). Section 21(2) to (5) provides for the situation where a transsexual person claims to have changed legal gender in their country of origin and married a person of the opposite sex to their acquired gender in that country or another country outside the UK. At present, these marriages have no standing under the law of England and Wales until a full gender recognition certificate has been issued by the Gender Recognition Panel because the law of the England and Wales regards the parties as having not been respectively male and female when the marriage was solemnized. As marriages in England and Wales will now be available to

legally same sex couples, these sections can be disapplied for the purposes of the law of England and Wales.

168. Paragraph 13 makes a consequential amendment to section 22 of the Gender Recognition Act.

169. Paragraph 14 inserts the definitions of "protected civil partnership", "protected marriage" and "statutory declaration of consent" into section 25 of the Gender Recognition Act (Interpretation).

Part 2 – Alternative grounds for granting applications for gender recognition certificates

170. Part 2 of Schedule 5 makes additional changes to the Gender Recognition Act. When the Gender Recognition Act came into force on 4 April 2005, section 27 included a modified evidence process which was open to applicants who could produce evidence that they had been living in their acquired gender for six years prior to the date on which they made their application. The so-called "fast track" process ran for the first two years after commencement of the Gender Recognition Act and expired on 3 April 2007. Part 2 of Schedule 5 inserts a new modified evidence process into the Gender Recognition Act which is not limited in time. The modified evidence process set out in new section 3B of the Gender Recognition Act will only be available to applicants who meet the four conditions set out in new section 3A of the Act.

171. Paragraph 16 inserts new subsection (3A) into section 2 of the Gender Recognition Act. New subsection (3A) provides that section 2 of the Gender Recognition Act (Determination of applications) does not apply to any application under section 1(1)(a) of the Gender Recognition Act where the applicant indicates that they are making an application for a gender recognition certificate to be granted in accordance with new section 3A of the Gender Recognition Act.

172. Paragraph 17 inserts new section 3A into the Gender Recognition Act. New section 3A(2) provides that, if the Gender Recognition Panel is satisfied that the applicant meets the four conditions set out in new sections 3A(3) to (6) and has complied with the evidence requirements set out in new section 3B, it must grant the application subject to section 4 of the Gender Recognition Act (Successful applications). If the Gender Recognition Panel is not satisfied, it must reject the application in accordance with new section 3A(7).

173. New subsections 3A(3) to (6) set out the four conditions applicants must meet to be eligible to rely on the modified evidence process set out in new section 3B of the Gender Recognition Act:

- The first condition is that the applicant was a party to a protected marriage or protected civil partnership on or before the date they make their application for gender recognition.
- The second condition is that the applicant: was living in their acquired gender for six years prior to the date of commencement of section 12 of the Act; has continued to live in their acquired gender until the date they made their application; and intends to continue living in their acquired gender until death.
- The third condition is that the applicant has or has had gender dysphoria or has undergone treatment for the purpose of modifying sexual characteristics.
- The fourth condition is that the applicant is ordinarily resident in England, Wales or Scotland.

174. Paragraph 18 inserts new subsection (9) into section 3 of the Gender Recognition Act which disapplies the evidence requirements set out in section 3 in respect of applications where the applicant indicates that they are making an application for a

gender recognition certificate to be issued in accordance with new section 3A of the Gender Recognition Act.

175. Paragraph 19 inserts new section 3B into the Gender Recognition Act. New section 3B sets out the modified evidence process an applicant who meets the four conditions in new section 3A of the Gender Recognition Act is entitled to rely on.

176. New subsections 3B(2) to (4) set out medical evidence applicants are required to submit. If the applicant is applying on the basis of having or having had gender dysphoria, a report made by a registered medical practitioner specialising in the field of gender dysphoria or a registered psychologist practising in the field of gender dysphoria which sets out details of the diagnosis of gender dysphoria is required. If the applicant is applying on the basis of having undergone treatment for the purpose of modifying sexual characteristics, or if the applicant indicates that they are currently undergoing such treatment or that such treatment has been planned or prescribed for them, a report made by a registered medical practitioner or registered psychologist practising in the field of gender dysphoria which sets out details of the treatment is required.

177. New sections 3B(5) to (8) set out the additional evidence applicants are required to submit. New section 3B(5) requires applicants to include a statutory declaration that they meet the conditions in new section 3A of the Gender Recognition Act. New section 3B(6) requires applicants to include in their statutory declaration a declaration as to whether they are single, married or in a civil partnership. The Secretary of State can amend the evidence requirements in new section 3B by order and the Gender Recognition Panel may require applicants to submit any additional evidence it requires to determine the application provided it gives reasons for such requests (new section 3B(10)). Applicants can also submit any additional evidence they wish to include in their application.

178. If an applicant indicates that they are married, new section 3B(7) requires married applicants or applicants in civil partnerships to include in their statutory declaration an additional declaration as to where their marriage or civil partnership was registered. This will enable the Gender Recognition Panel to determine whether the marriage or civil partnership is a protected marriage or civil partnership. Where the marriage is a protected marriage, new section 3B(8) requires an application to contain a statutory declaration of consent ("statutory declaration of consent" defined in new section 3(6B) of the Gender Recognition Act as "a declaration by the applicant's spouse that he or she consents to the marriage continuing after the issue of a full gender recognition certificate") or a statutory declaration by the applicant that his or her spouse has not made such a declaration. If the application contains a statutory declaration of consent by the applicant's spouse, new section 3B(9) requires the Gender Recognition Panel to inform the spouse that an application has been made.

179. Paragraph 20 amends Schedule 1 to the Gender Recognition Act to insert new subparagraph (3) to paragraph 4. New paragraph 4(3) provides that the Gender Recognition Panel need not include a medical member when determining any application under section 1(1)(a) of the Gender Recognition Act where the application is for a gender recognition certificate to be granted in accordance with new section 3A of that Act.

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.

Schedule 7 – Transitional and consequential provision etc

Part 1 – Transitional and transitory provision

188. Paragraph 1 deals with transitional arrangements in relation to "approved premises". These are premises (such as hotels) which have been approved by local authorities as venues for civil marriage ceremonies and civil partnership registrations. The effect of paragraph 1 is that any premises in the process of applying to be approved, or already approved, as a venue for marriages of opposite sex couples will automatically be approved as a venue for marriages of same sex couples. Any future applications for, and grants of, approval of premises, will be for both same sex and opposite sex civil marriage ceremonies. All approved premises will be subject to the approved premises regulations (as defined) and any related guidance, on commencement of section 11.

Examples

- A hotel has already been approved by a local authority as a place where civil marriage ceremonies and civil partnerships can take place. The licence of approval will automatically extend to allowing for marriage of same sex couples.
- A hotel wishes to apply to be approved as a place where civil marriage ceremonies and civil partnerships can take place. The approval, if granted, will apply to both same sex and opposite sex marriage ceremonies.

Part 2 – Minor and consequential amendments

189. Part 2 (paragraphs 2-21) makes amendments to the Marriage Act.

190. Paragraph 3 amends section 3 (Marriages of persons under 18) of the Marriage Act. The effect of this amendment is that a person who has previously been a civil partner and whose partner has died will not need to get parental consent for marrying another person even if he or she is under 18.

191. Paragraph 4 amends section 25 (Void marriages) to provide that marriages of same sex couples according to the rites of the Church of England will be void. Paragraph 5 amends section 27A of the Marriage Act to extend the provisions for requiring

additional information for detained or house-bound marriages to such marriages of same sex couples.

192. Paragraph 6 inserts a new section 27D into the Marriage Act to provide that the superintendent registrar may require a copy of the relevant governing authority's consent in the cases of marriage of same sex couples in respect of Quaker marriages and marriages under the rites of the Jewish religion, and marriage of a house-bound or detained person.

193. Paragraph 7 amends section 28A of the Marriage Act to insert a power for the superintendent registrar to require the relevant governing authority to give evidence of the consent required for Quaker, Jewish or detained or house-bound marriages of same sex couples.

194. Paragraph 8 amends the title of section 41 of the Marriage Act to refer to a marriage of a man and a woman and applies the provisions of section 41 only to the marriage of a man and a woman.

195. Paragraph 9 amends section 42 of the Marriage Act dealing with cancellation of registration of premises no longer used, to apply this provision only to buildings registered to carry out marriages of opposite sex couples.

196. Paragraph 10 amends section 43 of the Marriage Act to take account of different statutory provisions which apply to the registration of religious buildings for marriages of same sex and opposite sex couples. The power to appoint an authorised person may be exercised within one year of the building's registration to solemnize marriages (whether marriages of an opposite sex or same sex couple).

197. Paragraphs 11 and 12 insert and amend internal cross-references in sections 44 and 45A of the Marriage Act regarding solemnization of marriages in registered buildings and solemnization of marriages at one of the parties' place of residence.

198. Paragraph 13 inserts new subsections (1A) to (1D) into section 46 of the Marriage Act to provide for a religious ceremony after a registrar's marriage of a same sex couple (except for the Church of England and Church in Wales) and providing the religious organisation has consented to such ceremonies.

199. Paragraph 14 makes consequential amendments to section 48 of the Marriage Act to ensure that a lack of consent to marriage of same sex couples or to registration of the building in which the marriage took place on the part of the relevant governing body does not affect the validity of the marriage.

200. Paragraph 15 inserts new section 49A which provides that a marriage of a same sex couple will be void if they have knowingly and wilfully married in the absence of the required consent to the marriage of same sex couples.

201. Paragraph 16 amends section 53 of the Marriage Act to provide that where a couple marry under the rites of the Jewish religion, the secretary of their synagogue registers the marriage and, where the couple are members of different synagogues, they can nominate which secretary registers their marriage.

202. Paragraph 17 inserts a reference to people authorised to register marriages of opposite sex couples into section 69 of the Marriage Act (Licensing of chapels for marriages according to the Church of England or Church in Wales).

203. Paragraph 18 inserts a reference to buildings registered to solemnize marriages of opposite sex couples into section 70 of the Marriage Act (which deals with the registration of chapels for marriages otherwise than according to the rites of the Church of England or the Church in Wales).

204. Paragraph 19 inserts references to marriage of same sex couples into section 75 of the Marriage Act (Offences relating to solemnization of marriage).

205. Paragraph 20 amends section 78 of the Marriage Act (Interpretation) to provide an amended definition of an "authorised person" to make clear how it applies in relation to both an opposite sex marriage ceremony and a same sex marriage ceremony and an updated definition of a "registered building". It also defines England and Wales legislation in the context of the Marriage Act.

206. Paragraph 21 amends Schedule 4 to the Marriage Act (Provisions of the Act excluded or modified in their application to Naval, Military and Air Force chapels) to insert references to provisions for marriage of same sex couples and provides a definition of England and Wales legislation for the Marriage Act.

207. Paragraphs 22 to 25 amend sections 1 and 2 of the Marriage (Registrar General's Licence) Act 1970 with the effect that the superintendent registrar has the power to require the governing authority of a religious body which proposes to conduct a "deathbed marriage" of a same sex couple to provide evidence of its consent to marriage of same sex couples. This ensures that equivalent religious protections are applied to these marriages, and gives the superintendent registrar the same powers to require evidence of consent in respect of deathbed marriages as he or she has for other marriages of same sex couples according to religious rites which do not take place on appropriately registered premises. Paragraph 25 inserts a new section 13A which provides that, as for other marriages of same sex couples, a marriage of a same sex couple under the deathbed marriage provisions will be void, if they have knowingly and wilfully married in the absence of the required consent to the marriage of same sex couples.

208. Paragraphs 26 and 27 repeal section 11(c) of the Matrimonial Causes Act 1973 with the effect that the fact that a couple are not a man and a woman does not make a marriage void.

209. Paragraph 28 amends section 29JA of the Public Order Act 1986 to ensure that discussion or criticism of marriage which concerns the sex of the parties to it are not taken in themselves to be threatening or intended to stir up hatred.

210. Paragraphs 29 and 30 make consequential amendments to the Social Security Contributions and Benefits Act 1992.

211. Paragraphs 31 and 32 make consequential amendments to section 99 of the Pension Schemes Act 1993. Section 99 sets out the duties of trustees or managers of schemes after a member has exercised the option conferred by section 95 (Ways of taking right to cash equivalent). Section 99(3)(b) refers only to the pension or benefits of a member or his widow. Paragraph 32 amends section 99(3)(b) so that it applies to the pension and benefits of a member and his or her spouse or civil partner.

212. Paragraphs 33 to 36 amend the Civil Partnership Act.

213. Paragraph 34 amends the provisions in section 1(3) of the Civil Partnership Act, which set out how a civil partnership can be ended. The amendment provides that, in addition to death, dissolution and annulment, a civil partnership ends if it is converted into a marriage under section 9 of the Act.

214. Paragraph 35 amends section 4 of the Civil Partnership Act, which provides that, where a person wishing to register a civil partnership is under 18 years of age, the consent of an appropriate person or persons is required. Subsection 4(3) of the Civil Partnership Act currently provides that this requirement does not apply if the child is a surviving civil partner.

215. The effect of this amendment is that a widow or widower under the age of 18 will not require the consent of another person before entering into a civil partnership.

Example

- A 17 year old widow does not have to obtain the consent of one of her parents who has parental responsibility for her before entering into a civil partnership.

216. Paragraphs 37 to 41 make provision for the general principle that the civil partnership recognitions in the Human Fertilisation and Embryology Act 2008 are extended to marriage of same sex couples.

217. Paragraphs 42 to 45 make amendments to the Equality Act 2010. In particular, paragraph 43 amends section 23 (Comparison by reference to circumstances) to make clear that, where the protected characteristic is sexual orientation, it is not a material difference for the purposes of comparison, when considering a claim of discrimination, that a person is married to someone of the same sex while another is married to someone of the opposite sex.

218. Paragraph 45 amends paragraph 2 of Schedule 9 to the Equality Act 2010 (Religious requirements relating to sex, marriage etc, sexual orientation) so that, where employment is for the purposes of an organised religion, an occupational requirement may allow a restriction that a person should not be married to someone of the same sex. This means, for example, that a church may require that a priest not be married to a person of the same sex.

Commencement

219. The short title of the Act and the power to make commencement orders came into force on 17 July 2013 - the day on which the Act was passed (section 21), as did sections 15 and 16. The remaining provisions of the Act will be brought into force on a day or days appointed by commencement order made by the Secretary of State and provisions may be brought into force on different days and at different times for different purposes.

HANSARD REFERENCES

220. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	***Date***	***Hansard Reference***
House of Commons		
Introduction	24 January 2013	Vol.557 Col 478
Second Reading	5 February 2013	Vol 558 Col 125 – 247
Committee	12 February 2013	Hansard Public Bill Committee Marriage (Same Sex Couples) Bill
	12 February 2013	
	14 February 2013	
	14 February 2013	
	26 February 2013	
	26 February 2013	
	28 February 2013	
	28 February 2013	
	5 March 2013	
	5 March 2013	
	7 March 2013	
	7 March 2013	
	12 March 2013	
	(13 Sittings	

Stage	***Date***	***Hansard Reference***
House of Commons		
Report	20 May 2013	Vol 563 Col 921 – 1021
Report and Third Reading	21 May 2013	Vol 563 Col 1071 – 1173
Commons consideration of Lords amendments	16 July 2013	Vol 566 Col 1026 – 1059
Royal Assent	17 July 2013	Vol 566 Col 1124
Stage	***Date***	***Hansard Reference***
House of Lords		
Introduction	21 May 2013	Vol.745 Col 834
Second Reading	3 June 2013	Vol 745 Col 937 – 969
		Vol 745 Col 980 – 1048
4 June 2014	Vol 745 Col 1059 – 1113	
Committee	17 June 2013	Vol 746 Col 11 - 79
		Vol 746 Col 95 – 129
	19 June 2013	Vol 746 Col 259 – 311
		Vol 746 Col 326 – 382
	24 June 2013	Vol 746 Col 507 – 569
		Vol 746 Col 599 – 648
Report	8 July 2013	Vol 747 Col 11 – 74
		Vol 747 Col 89 – 148
	10 July 2013	Vol 747 Col 278 – 325
		Vol 747 Col 351 – 394
Third Reading	15 July 2013	Vol 747 Col 531 – 549
Royal Assent	17 July 2013	Vol 747 Col 751