

EXPLANATORY MEMORANDUM TO
THE MARRIAGE OF SAME SEX COUPLES (CONVERSION OF CIVIL
PARTNERSHIP) REGULATIONS 2014

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the Regulations is to set out the procedures to be followed by couples who wish to convert their civil partnership into a marriage.

2.2 For reasons set out below, this instrument replaces previous draft Regulations called the Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014, laid on 3rd July 2014. The linked draft Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) (No. 2) Order 2014, laid on 3 July, has also been withdrawn and replaced with the draft Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014.

2.3 After the earlier draft instruments were laid, concerns were expressed by and on behalf of some stakeholders in the LGB&T community, and by some religious organisations that wish to celebrate marriages for same sex couples, that the earlier draft Regulations were too inflexible in terms of the process offered for conversion of civil partnership into marriage, since they allowed conversions to take place only in a register office. It was felt that this did not provide sufficient choice for people who had formed civil partnerships as the best option available to them at the time, but who would otherwise have wished to be married, and who would still want to be able to have a celebration of the marriage at conversion in much the same way as couples entering a legal relationship for the first time.

2.4 As a result changes have been made in the revised draft Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 to allow a superintendent registrar or deputy superintendent registrar to complete a conversion of a civil partnership into a marriage in a wider range of locations. The draft Regulations now provide that the conversion can be completed and immediately followed by a ceremony in locations where a same sex couple could marry. In the case of religious premises and ceremonies, that ceremony takes place under the legal authority of section 46 of the Marriage Act 1949, which was amended in the Marriage (Same Sex Couples) Act 2013 specifically to include ceremonies held following a conversion of a civil partnership into a marriage. To support these changes, section 46 of the Marriage Act 1949 has been further amended in the draft Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and

Scotland) and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014 to make clear how it applies in this wider range of circumstances.

2.5 The draft Regulations have also been amended to incorporate provision (in Parts 3 and 4) for conversions to take place overseas, in consular premises or on armed forces bases. When the Regulations were originally laid in July 2014, it was intended that this provision would be made in a separate instrument but in view of the other revisions to the Regulations, and associated delay to the Parliamentary timetable, it was considered preferable to include the consular and armed forces provision in the same instrument.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Marriage (Same Sex Couples) Act 2013 (“the Act”) received Royal Assent on 17 July 2013. It made marriage of same sex couples lawful in England and Wales, substantially amending the Marriage Act 1949 and other related legislation. The bulk of the Act was brought into force on 13th March 2014. The Act also makes provision for the conversion of civil partnership into marriage and for married couples to remain married if one party undergoes gender transition, which were not brought into force at that time.

4.2 These Regulations are one of a series of instruments which will implement these remaining provisions of the Act. The other instruments under the affirmative procedure are the draft Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014, and the draft Consular Marriages and Marriages under Foreign Law (No. 2) Order 2014. Further instruments (subject to the negative, or no procedure) will be made at a later date.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Rt. Hon James Brokenshire, Minister of State for Immigration and Security has made the following statement regarding Human Rights:

In my view the provisions of the Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 are compatible with the Convention rights.

7. Policy background

7.1 The overall purpose of the Act is to make marriage of same sex couples possible in England and Wales and to secure that same sex married couples are generally treated in the same way as opposite sex married couples.

7.2 The Act enables civil partners to convert their civil partnership into a marriage where the civil partnership was registered in England and Wales or overseas at a consulate or armed forces base where the couple elected England and Wales as the relevant law for the registration. These Regulations set out in detail the processes for the conversion of civil partnerships into marriages including:

- a 'standard' conversion procedure in which the couple attend before the superintendent registrar in a register office or local registration office to convert their civil partnership;
- provision for conversions to take place at the residence of a person who is housebound, or at the place of detention of one of the parties;
- a special procedure for conversions where one party is terminally ill and not expected to recover;
- a two stage procedure, where the couple wish to convert the civil partnership on secular or religious premises at which marriages of same sex couples can take place. A conversion may only take place on religious premises where it is immediately to be followed by a religious blessing under section 46 of the Marriage Act 1949. This requirement ensures that the provisions in the Marriage (Same Sex Couples) Act 2013 that protect religious bodies from being compelled against their conscience to be involved in marriages of same sex couples, apply equally to conversions. The draft Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014, laid at the same time as this instrument, amends section 46 of the Marriage Act 1949 to ensure that it applies appropriately to religious ceremonies following conversions.
- requirements for information and evidence to be provided to a superintendent registrar in England and Wales before the conversion. Both parties must then sign a declaration, in the presence of each other and the superintendent registrar, confirming that they are in a civil partnership and that they wish to convert the civil partnership into a marriage. When the parties and the superintendent registrar have signed the declaration they will be married;
- provision for the registration of the declaration in the conversion register and the issue of a marriage certificate;
- provision for the creation of an index of civil partnership conversions (which may be held jointly with the index of marriages) and access to conversion records;

- fees for the conversion process;
- provision for conversions to take place abroad, on consular premises or armed forces bases where the authorities in the host country have consented to conversions taking place.

8. Consultation outcome

8.1 No specific consultation has been undertaken on these Regulations, although there has been engagement with relevant stakeholders on the conversion process. The Government carried out a consultation on how marriage of same sex couples should be introduced prior to the introduction of the Act, which ran for 13 weeks and closed on 14 June 2012. There were over 228,000 responses of which 53% were in favour of the proposals and a number of large petitions which were opposed to the proposals. Most responses to the consultation question on the conversion of civil partnerships supported the introduction of a route by which civil partnerships could be converted to civil marriages. The consultation document and the Government response “Equal marriage: The Government’s response” are available at <https://www.gov.uk/government/consultations/equal-marriage-consultation>.

9. Guidance

9.1 The General Register Office has produced guidance for staff involved in the conversion process that will be available to local authorities, registration officers and citizens setting out the amendments made by these Regulations.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is an impact on the public sector. The costs of this proposal fall primarily on public bodies which will need to adjust IT systems and administrative processes to record conversions of civil partnerships into marriage. There are also some familiarisation costs for local authorities who employ superintendent registrars to conduct conversions.

10.3 An Impact Assessment has not been prepared for this instrument. An impact Assessment was published for the Marriage (Same Sex Couples) Act 2013 which can be found at <https://www.gov.uk/government/publications/marriage-same-sex-couples-bill>

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Government has no specific targets in this area other than in regard to the fees which are set to recover full costs and are subject to annual review.

13. Contact

Alison Tighe at the General Register Office (part of Her Majesty's Passport Office) Tel: 0151 471 4293 or email: Alison.Tighe@gro.gsi.gov.uk can answer any queries regarding the instrument.