

**EXPLANATORY MEMORANDUM TO
THE MARRIAGE OF SAME SEX COUPLES (USE OF ARMED FORCES' CHAPELS)
REGULATIONS 2014**

2014 No. 815

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

2. Purpose of the instrument

2.1 The purpose of these Regulations is to set out the procedures to enable the Secretary of State for Defence to register armed forces' chapels for marriage of same sex couples, and to cancel such registrations.

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 received Royal Assent on 17th July 2013. This is one of a number of Orders and Regulations which are being laid before Parliament at the same time and which are necessary for implementation of the majority of the Act. They include, briefly, statutory instruments:

- making consequential and other amendments to primary and secondary legislation in England and Wales¹;
- setting out procedures for registration of shared religious buildings for the solemnization of marriages of same sex couples²;
- setting out provisions on jurisdiction in the event of divorce or annulment of a marriage of a same sex couple³;
- allowing separate registration of religious buildings and appointment of authorised persons for marriage of same sex couples⁴;

¹ The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provision and Scotland) Order 2014, and the Marriage (Same Sex Couples) Act 2013 (Consequential Provision) Order 2014

² The Marriage of Same Sex Couples (Registration of Shared Buildings) Regulations 2014

³ The Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgements) Regulations 2014

⁴ The Marriage of Same Sex Couples (Registration of Buildings and Appointment of Authorised Persons) Regulations 2014

- setting out procedures for marriages in overseas consulates and for armed forces overseas⁵;
- providing for graduated retirement benefit to be inheritable by a surviving same sex spouse⁶;
- making changes to particular public service pension schemes to provide survivor benefits for married same sex couples on the same basis as civil partners⁷.

4.2 This instrument is made under Section 70A Marriage Act 1949 which is inserted by Section 6 Marriage (Same Sex Couples) Act 2013. It sets out procedures for the registration under the Marriage Act 1949 of naval, military, and air force chapels for marriage of same sex couples. This instrument provides for the Secretary of State to consult with relevant religious authorities regarding the registration or cancellation of registration of armed forces' chapels.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

Anna Soubry Minister for Defence Personnel, Welfare and Veterans at the Ministry of Defence has made the following statement regarding Human Rights:

In my view the Marriage of Same Sex Couples (Use of Armed Forces' Chapels) 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 couples are generally treated in the same way as opposite sex couples, while making provisions to protect religious freedoms in relation to the solemnization of marriage. The purpose of Section 6 of the Act is to ensure that these arrangements are also available to those who use armed forces' chapels, taking into account their particular circumstances.

⁵ The Consular Marriages and Marriages under Foreign Law Order 2014, and the Overseas Marriage (Armed Forces) Order 2014

⁶ The Social Security (Graduated Retirement Benefit)(Married Same Sex Couples) Regulations 2014

⁷ The National Health Service Pension Scheme, Additional Voluntary Contributions, Compensation for Premature Retirement and Injury Benefits (Amendment) Regulations 2014, and the Police Pensions (Amendment) Regulations 2014

7.2 The position on armed forces' chapels differs from that of civilian religious buildings in that they are (with some exceptions) owned by the State and not by the religious organisations that use those chapels. This places responsibility for registration of armed forces' chapels for the purposes of marriage of same sex couples with the Secretary of State. As a public authority, the Secretary of State is required, under section 6 of the Human Rights Act 1998, to act in a manner which is compatible with Convention Rights. He must accordingly take into account, in determining whether to apply for registration, the rights of both religious organisations and their devotees, and those of a same sex couple who might wish their marriage to be solemnized in an armed forces' chapel. The Regulations require the Secretary of State to undertake a process of consultation before making an application, to establish the views of the faiths and their congregations who make significant regular use of the relevant chapel. The majority of armed forces' chapels are shared by a number of faiths, who may adopt different positions towards the marriage of same sex couples.

7.3 Save as explained in paragraph 7.2, the protections contained in the Act which are afforded to religious organisations, individual religious ministers and to the Church of England and the Church in Wales as the established church remain unaffected. A small number of armed forces' chapels are consecrated by the Church of England under ecclesiastical law, and will not be registered for the marriage of same sex couples.

8. Consultation outcome

8.1 No specific consultation has been undertaken in respect of this instrument. However, the Government carried out a consultation on equal marriage 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. This was followed by the publication of the Government response "Equal marriage: The Government's response". Both the consultation and response documents are available at <https://www.gov.uk/government/consultations/equal-marriage-consultation>.

9. Guidance

9.1 No guidance has been prepared specifically for this instrument. Relevant guidance will be produced for armed forces personnel when the regulations come into force in June 2014.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible

10.3 An Impact Assessment has not been prepared for this instrument as no cost on business is foreseen, but an impact assessment was published alongside the Act and is available through the DCMS website: <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 operation of the Act under which this instrument falls will be subject to review after 5 years.

13. Contact

13.1 Tracy Sexton at the Ministry of Defence Tel: 0207 2180564 or email: CLS-Sec1@mod.uk can answer any queries regarding the instrument.