

EXPLANATORY MEMORANDUM TO
THE CONSULAR MARRIAGES AND MARRIAGES UNDER FOREIGN LAW ORDER
2014

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by The Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the Order is to make provision, as a result of the coming into force of the Marriage (Same Sex Couples) Act 2013 ("the Act"), for two people to marry each other in prescribed countries or territories outside the United Kingdom and in the presence of a registration officer, in cases where the officer is satisfied that the following conditions are met:

- a) at least one of the people proposing to marry is a United Kingdom national;
- b) the people proposing to marry would have been eligible to marry each other in such part of the United Kingdom as is determined in accordance with the Order;
- c) the authorities of the country or territory in which it is proposed that they marry will not object to the marriage; and
- d) insufficient facilities exist for them to enter into a marriage under the law of that country or territory.

2.2 The Order also makes provision for the issue of certificates of no impediment to United Kingdom nationals who wish to marry in a country or territory outside the United Kingdom where the law of that country or territory requires a consular certificate of no impediment to be issued.

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

3.1 None.

4. Legislative Context

4.1 The Act received Royal Assent on 17th July 2013. There are a number of statutory instruments which implement the Act and enable marriage of same sex couples to take place in England and Wales from March 2014:

- The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014;
- The Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) (No. 2) Order 2014;
- The Marriage of Same Sex Couples (Registration of Shared Buildings) Regulations 2014;
- The Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgements) Regulations 2014; and
- The Social Security (Graduated Retirement Benefit) (Married Same Sex Couples) Regulations 2014.

4.2 This Order is part of the implementation of section 13 of, and Schedule 6 to, the Act which regulates consular and armed forces marriages and which will come into effect from June 2014. Except in relation to Northern Ireland, the Act repeals the Foreign Marriage Act 1892 which, together with the Foreign Marriage Order 1970 (S.I. 1970/1539), provides the current statutory framework for consular marriages. Consular marriages in relation to Northern Ireland will continue to be solemnised under the Foreign Marriage Act 1892 and the Foreign Marriage Order 1970. Armed Forces marriages under the Act are being implemented through two statutory instruments:

- The Marriage of Same Sex Couples (Use of Armed Forces Chapels) Regulations 2014;
- The Overseas Marriage (Armed Forces) Order 2014.

5. Territorial Extent and Application

5.1 Part 2 of this Order extends to England and Wales and Scotland. Part 3 also extends to Northern Ireland.

6. European Convention on Human Rights

Minister Mark Simmonds has made the following statement regarding Human Rights:

“In my view the provisions of the Consular Marriages and Marriages under Foreign Law Order 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 lawful in England and Wales and to secure that same sex married couples are generally treated in the same way as opposite sex married couples. Marriage of same sex couples is not currently lawful in Scotland or Northern Ireland. The Order relates to consular marriages overseas and marriages under foreign law.

7.2 This Order is made under Schedule 6 to the Act which empowers Her Majesty, by Order in Council, to make provision for two people to marry in countries or territories outside the United Kingdom in the presence of a registration officer (consular official). Schedule 6 also empowers Her Majesty, by Order in Council, to make provision for the issuing of certificates of no impediment where a marriage is to take place under foreign law.

Part 2 – consular marriages

7.3 Part 2 of this Order sets out the process for consular marriages, which are those conducted by registration officers. It makes provision that consular marriages may only take place in those territories or countries which have notified the Secretary of State that they do not object to such marriages. This enables countries or territories to specify that they do not permit certain types of marriage, for example those marriages involving one of their own nationals, or marriages of couples of the same sex.

7.4 The Order also sets out a residency requirement of seven days before the notice of intention to marry can be made and the details which must be included in a notice of intention to marry which must be displayed for 14 days in a conspicuous place. This includes the part of the United Kingdom, which must be either England and Wales or Scotland, which the parties have jointly elected as the relevant part of the United Kingdom. The relevant part of the United Kingdom determines the law under which the parties will be married and the conditions governing that marriage. Consular marriages under this Order may only be solemnised according to the law of England and Wales or the law of Scotland.

7.5 The Order makes provision for consent to be provided or withheld according to the law of the relevant part of the United Kingdom; for entering an objection to the proposed marriage; and that once a marriage notice has been issued, the marriage must take place within 3 months otherwise the marriage will not be valid.

7.6 The Order sets out the oath that must be made by each party to the marriage before the marriage is solemnised.

7.7 There is provision about keeping a register of marriages.

7.8 The Order provides that once a consular marriage has been solemnised, this is to be accepted as conclusive proof that the requirements were complied with in relation to the marriage. There is discretion for the Secretary of State to waive certain requirements if there is good reason to do so.

Part 3 – Marriage under Foreign Law

7.9 Part 3 of the Order concerns certificates of no impediment that may be required under foreign law to be produced before a British National may marry under that law. The Order sets out a residency requirement of three days before a British National may make an application for a certificate of no impediment; the details required in the application notice; and provides that the application notice must be displayed for seven days in a conspicuous place which enables objections to be made. The registration officer cannot issue a certificate if he or she believes there is any reason to believe that an impediment to the marriage would exist if it were to be conducted in the UK.

Part 4 – Consequential Amendments

7.10 Part 4 of the Order makes consequential amendments.

8. Consultation outcome

8.1 No specific consultation has been undertaken on this Order. 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 Order. Relevant guidance for the public and FCO staff will be produced ahead of the implementation of the Order in June 2014.

10. Impact

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

10.2 There is no impact on the public sector, apart from a likely increased workload for consular staff in those countries where the FCO will provide a marriage service for same sex couples. This will be absorbed within the current FCO budget.

10.3 An Impact Assessment has not been prepared for this instrument as no cost to 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

The legislation does not apply to small business.

12. Monitoring & review

The operation of the Act under which this Order falls will be subject to review after 5 years.

13. Contact

David Pert at the Foreign and Commonwealth Office. Tel: 020 7008 0224 or email: David.Pert@fco.gov.uk can answer any queries regarding the instrument.