

MARRIAGE (SAME SEX COUPLES) ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

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);

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- 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”,

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- “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.