

SCHEDULES

SCHEDULE 4

Section 11

EFFECT OF EXTENSION OF MARRIAGE: FURTHER PROVISION

PART 1

PRIVATE LEGAL INSTRUMENTS

Existing instruments

- 1 (1) Section 11 does not alter the effect of any private legal instrument made before that section comes into force.
- (2) In this paragraph “private legal instrument” includes—
 - (a) a will,
 - (b) an instrument (including a private Act) which settles property,
 - (c) an instrument (including a private Act) which provides for the use, disposal or devolution of property, and
 - (d) an instrument (including a private Act) which—
 - (i) establishes a body, or
 - (ii) regulates the purposes and administration of a body,(whether the body is incorporated or not and whether it is charitable or not); but (with the exception of the kinds of private Act mentioned above) it does not include England and Wales legislation.

PART 2

PRESUMPTION ON BIRTH OF CHILD TO MARRIED WOMAN

Common law presumption

- 2 (1) Section 11 does not extend the common law presumption that a child born to a woman during her marriage is also the child of her husband.
- (2) Accordingly, where a child is born to a woman during her marriage to another woman, that presumption is of no relevance to the question of who the child’s parents are.

Status: This is the original version (as it was originally enacted).

PART 3

DIVORCE AND ANNULMENT OF MARRIAGE

Divorce

- 3 (1) Section 1 of the Matrimonial Causes Act 1973 (divorce on breakdown of marriage) is amended as follows.
- (2) After subsection (5) insert—
- “(6) Only conduct between the respondent and a person of the opposite sex may constitute adultery for the purposes of this section.”.

Annulment of marriage

- 4 (1) Section 12 of the Matrimonial Causes Act 1973 (grounds on which a marriage is voidable) is amended as follows.
- (2) The existing provision of section 12 becomes subsection (1) of that section.
- (3) After that subsection (1) insert—
- “(2) Paragraphs (a) and (b) of subsection (1) do not apply to the marriage of a same sex couple.”.

PART 4

MATRIMONIAL PROCEEDINGS

Amendment of the Domicile and Matrimonial Proceedings Act 1973

- 5 The Domicile and Matrimonial Proceedings Act 1973 is amended as follows.
- 6 (1) Section 5 (jurisdiction of High Court and county courts) is amended in accordance with this paragraph.
- (2) Subsection (1): after “entertain” insert “any of the following proceedings in relation to a marriage of a man and a woman”.
- (3) After subsection (5) insert—
- “(5A) Schedule A1 (jurisdiction in relation to marriage of same sex couples) has effect.”.
- (4) Subsection (6): after “Wales” insert “(whether the proceedings are in respect of the marriage of a man and a woman or the marriage of a same sex couple)”.
- 7 Section 6 (miscellaneous amendments, transitional provision and savings), subsection (3): after “Act” (in the first place) insert “, or by virtue of Schedule A1 to this Act,”.
- 8 Before Schedule 1 insert—

“*SCHEDULE A1*”

JURISDICTION IN RELATION TO MARRIAGE OF SAME SEX COUPLES

1 Introduction

This Schedule shall have effect, subject to section 6(3) and (4), with respect to the jurisdiction of the court to entertain any of the following proceedings in relation to a marriage of a same sex couple—

- (a) proceedings for divorce, judicial separation or nullity of marriage;
- (b) proceedings for an order which ends a marriage on the ground that one of the couple is dead; and
- (c) proceedings for a declaration of validity.

2 Divorce, judicial separation or annulment

(1) The court has jurisdiction to entertain proceedings for divorce or judicial separation if (and only if)—

- (a) the court has jurisdiction under regulations under paragraph 5,
- (b) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5 and either of the married same sex couple is domiciled in England and Wales on the date when the proceedings are begun, or
- (c) the following conditions are met—
 - (i) the two people concerned married each other under the law of England and Wales,
 - (ii) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5, and
 - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

(2) The court has jurisdiction to entertain proceedings for nullity of marriage if (and only if)—

- (a) the court has jurisdiction under regulations under paragraph 5,
- (b) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5 and either of the married same sex couple—
 - (i) is domiciled in England and Wales on the date when the proceedings are begun, or
 - (ii) died before that date and either was at death domiciled in England and Wales or had been habitually resident in England and Wales throughout the period of 1 year ending with the date of death, or
- (c) the following conditions are met—
 - (i) the two people concerned married each other under the law of England and Wales,
 - (ii) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5, and
 - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

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- (3) At any time when proceedings are pending in respect of which the court has jurisdiction by virtue of sub-paragraph (1) or (2) (or this sub-paragraph), the court also has jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, even though that jurisdiction would not be exercisable under subsection (1) or (2).

3 Presumption of death order

The court has jurisdiction to entertain proceedings for an order which ends a marriage on the ground that one of the couple is dead on an application made by the other of the couple (“the applicant”) if (and only if)—

- (a) at the time the application is made, the High Court does not have jurisdiction to entertain an application by the applicant under section 1 of the Presumption of Death Act 2013 for a declaration that the applicant’s spouse is presumed to be dead, and
- (b) the two people concerned married each other under the law of England and Wales and it appears to the court to be in the interests of justice to assume jurisdiction in the case.

4 Declaration of validity

The court has jurisdiction to entertain an application for a declaration of validity if (and only if)—

- (a) either of the parties to the marriage to which the application relates—
 - (i) is domiciled in England and Wales on the date of the application,
 - (ii) has been habitually resident in England and Wales throughout the period of 1 year ending with that date, or
 - (iii) died before that date and either was at death domiciled in England and Wales or had been habitually resident in England and Wales throughout the period of 1 year ending with the date of death, or
- (b) the two people concerned married each other under the law of England and Wales and it appears to the court to be in the interests of justice to assume jurisdiction in the case.

5 Power to make provision corresponding to EC Regulation 2201/2003

- (1) The Lord Chancellor may by regulations make provision—
- (a) as to the jurisdiction of courts in England and Wales in proceedings for the divorce of, or annulment of the marriage of, a same sex couple or for judicial separation of a married same sex couple where one of the couple—
 - (i) is or has been habitually resident in a member State,
 - (ii) is a national of a member State, or
 - (iii) is domiciled in a part of the United Kingdom or the Republic of Ireland, and
 - (b) as to the recognition in England and Wales of any judgment of a court of another member State which orders the divorce of, or

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annulment of a marriage of, a same sex couple or the judicial separation of a married same sex couple.

- (2) The regulations may in particular make provision corresponding to that made by Council Regulation (EC) No 2201/2003 of 27th November 2003 in relation to jurisdiction and the recognition and enforcement of judgments in matrimonial matters.
- (3) The regulations may provide that for the purposes of the regulations “member State” means—
 - (a) all member States with the exception of such member States as are specified in the regulations, or
 - (b) such member States as are specified in the regulations.
- (4) The regulations may make provision under sub-paragraph (1)(b) which applies even if the date of the divorce, annulment or judicial separation is earlier than the date on which this paragraph comes into force.
- (5) Regulations under this paragraph are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under this paragraph may not be made unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by resolution of, each House of Parliament.

6 Interpretation

In this Schedule “declaration of validity” means—

- (a) a declaration as to the validity of a marriage,
- (b) a declaration as to the subsistence of a marriage, or
- (c) a declaration as to the validity of a divorce, annulment or judicial separation obtained outside England and Wales in respect of a marriage.”.

- 9 Schedule 1 (staying of matrimonial proceedings in England and Wales: interpretation), paragraph 2: after “kinds” insert “(whether relating to a marriage of a man and a woman or a marriage of a same sex couple)”.

Transitory provision until commencement of Presumption of Death Act 2013

- 10 (1) This paragraph applies if section 1 of the Presumption of Death Act 2013 has not come into force at the time when the amendments of the Domicile and Matrimonial Proceedings Act 1973 made by the other provisions of this Part of this Schedule come into force.
- (2) Schedule A1 to the Domicile and Matrimonial Proceedings Act 1973 has effect with the following modifications until section 1 of the Presumption of Death Act 2013 comes into force.
- (3) Paragraph 1 has effect with the following provision substituted for paragraph (b)—
“(b) proceedings for death to be presumed and a marriage to be dissolved in pursuance of section 19 of the Matrimonial Causes Act 1973; and”.
- (4) Schedule A1 has effect with the following provision substituted for paragraph 3—

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- “3 The court has jurisdiction to entertain proceedings for death to be presumed and a marriage to be dissolved if (and only if)—
- (a) the applicant is domiciled in England and Wales on the date when the proceedings are begun,
 - (b) the applicant was habitually resident in England and Wales throughout the period of 1 year ending with that date, or
 - (c) the two people concerned married each other under the law of England and Wales and it appears to the court to be in the interests of justice to assume jurisdiction in the case.”.

PART 5

STATE PENSIONS

Category B retirement pension for married person

- 11 (1) Section 48A of the 1992 Act (Category B retirement pension for married person) does not confer a right to a Category B retirement pension on a person by reason of the person being married to a person of the same sex who was born before 6th April 1950.
- (2) But that does not prevent section 48A from conferring a right to such a pension on a woman by reason of her marriage to another woman (“the spouse”) if—
- (a) the spouse is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
 - (b) the marriage subsisted before the time when that certificate was issued.
- (3) In section 48A of the 1992 Act—
- (a) in subsection (2ZA)—
 - (i) in paragraph (a) for “married man who” substitute “man married to a woman and the spouse”;
 - (ii) after paragraph (b) insert—
 - “(c) in a case where the spouse is a woman born before 6th April 1945 who is married to a woman and subsection (2ZB) applies, the conditions specified in Schedule 3, Part 1, paragraph 5;
 - (d) in a case where the spouse is a woman born on or after 6th April 1945 but before 6th April 1950 who is married to a woman and subsection (2ZB) applies, the condition specified in Schedule 3, Part 1, paragraph 5A.”;
 - (b) after subsection (2ZA) insert—
 - “(2ZB) This subsection applies where—
 - (a) the spouse is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
 - (b) the marriage subsisted before the time when that certificate was issued.”

Status: This is the original version (as it was originally enacted).

- (4) In paragraph 5A of Schedule 3 to the 1992 Act, at the end of sub-paragraph (1)(b) insert “or in a case of the kind mentioned in subsection (2ZA)(d) of that section”.
- (5) In this paragraph “the 1992 Act” means the Social Security Contributions and Benefits Act 1992.

Category B retirement pension for widows and widowers

- 12
- (1) Section 48B of the 1992 Act (Category B retirement pension for widows and widowers) does not confer a right to a Category B retirement pension on a woman who attained pensionable age before 6th April 2010 by reason of her marriage to another woman.
 - (2) But that does not prevent section 48B from conferring a right to such a pension on a woman by reason of her marriage to another woman (“the spouse”) if—
 - (a) the spouse was, at the time of her death, a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
 - (b) the marriage subsisted before the time when that certificate was issued.
 - (3) In section 48B of the 1992 Act—
 - (a) in subsection (1ZA), in paragraph (a)(ii) after “date” (in the second place where it appears) insert “and the case does not fall within paragraph (c)”;
 - (b) in subsection (1ZA), after paragraph (b) insert—
 - “(c) in a case where—
 - (i) the spouse died on or after 6th April 2010,
 - (ii) the spouse was born on or after 6th April 1945 but before 6th April 1950,
 - (iii) the spouse was, at the time of her death, a woman and the pensioner in question is a woman, and
 - (iv) subsection (1ZB) applies,the condition specified in Schedule 3, Part 1, paragraph 5A.”;
 - (c) after subsection (1ZA) insert—
 - “(1ZB) This subsection applies where—
 - (a) the spouse was, at the time of her death, a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
 - (b) the marriage subsisted before the time when that certificate was issued.”
 - (4) In paragraph 5A of Schedule 3 to the 1992 Act, at the end of sub-paragraph (1)(c) insert “or in a case of the kind mentioned in subsection (1ZA)(c) of that section”.
 - (5) In this paragraph “the 1992 Act” means the Social Security Contributions and Benefits Act 1992.

Category B retirement pension for widowers

- 13
- (1) Section 51 of the 1992 Act (Category B retirement pension for widowers) is amended in accordance with sub-paragraphs (2) to (4).

Status: This is the original version (as it was originally enacted).

(2) After subsection (1) insert—

“(1ZA) A party to a marriage of a same sex couple shall be entitled to a Category B retirement pension if—

- (a) the other party has died and they were married to each other at the time of that death,
- (b) they were both over pensionable age at the time of that death, and
- (c) before that death the deceased party satisfied the contribution conditions for a Category A retirement pension in Schedule 3, Part 1, paragraph 5.”.

(3) Subsection (2): after “wife” insert “, husband”.

(4) Subsection (3): after “2002” insert “, surviving party to a same sex marriage”.

(5) Section 51(1ZA) of the 1992 Act does not confer a right to a Category B retirement pension on a person if the person attains pensionable age on or after 6th April 2010.

(6) Section 51(1ZA) of the 1992 Act does not confer a right to a Category B retirement pension on a woman by reason of her marriage to another woman (“the spouse”) if—

- (a) the spouse was, at the time of her death, a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
- (b) the marriage subsisted before the time when that certificate was issued.

(7) In this paragraph “the 1992 Act” means the Social Security Contributions and Benefits Act 1992.

Graduated retirement benefit

14 (1) Section 62 of the Social Security Contributions and Benefits Act 1992 (graduated retirement benefit) is amended as follows.

(2) Subsection (1): after paragraph (ac) insert—

“(ad) for extending section 37 of that Act (increase of woman’s retirement pension by reference to her late husband’s graduated retirement benefit) to—

- (i) men and their late husbands, and
- (ii) women and their late wives,

and for that section (except subsection (5)) so to apply as it applies to women and their late husbands;

(ae) for extending section 37 of that Act (increase of woman’s retirement pension by reference to her late husband’s graduated retirement benefit) to—

- (i) men and their late husbands, and
- (ii) women and their late wives,

who attained pensionable age before 6th April 2010 and for that section (except subsection (5)) so to apply as it applies to men and their late wives;”.

(3) After subsection (2) insert—

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- “(3) In relevant gender change cases, women and their late wives are to be treated for the purposes of sections 36 and 37 of the National Insurance Act 1965 in the same way as women and their late husbands.
- (4) For that purpose “relevant gender change case”, in relation to a woman (“the pensioner”) and her late wife, means a case where—
- (a) the late wife was, at the time of her death, a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
 - (b) the marriage of the pensioner and her late wife subsisted before the time when the certificate was issued.”

Adult dependency increases

- 15 (1) In a case where a full gender recognition certificate is issued to a person under the Gender Recognition Act 2004—
- (a) section 83 of the 1992 Act (pension increase (wife)) does not cease to apply by virtue of the change of gender; and
 - (b) in the continued application of section 83 in such a case, references to a pension payable to a man, or references to his wife, are to be construed accordingly.
- (2) In a case where a full gender recognition certificate is issued to a person under the Gender Recognition Act 2004—
- (a) section 84 of the 1992 Act (pension increase (husband)) does not cease to apply by virtue of the change of gender; and
 - (b) in the continued application of section 84 in such a case, references to a pension payable to a woman, or references to her husband, are to be construed accordingly.
- (3) In this paragraph “the 1992 Act” means the Social Security Contributions and Benefits Act 1992.

Converted civil partnerships

- 16 (1) This paragraph applies where a civil partnership is converted into a marriage under section 9.
- (2) For the purposes of section 48A of, and paragraph 5A(1)(b) of Schedule 3 to, the Social Security Contributions and Benefits Act 1992—
- (a) the civil partnership is to be treated as having subsisted during the period that begins with the day when it was formed and ends with the day before the conversion day, and
 - (b) the marriage is to be treated as subsisting only from the conversion day.
- (3) In this paragraph “conversion day” means the day when the civil partnership is converted into a marriage.

PART 6

OCCUPATIONAL PENSIONS AND SURVIVOR BENEFITS

Benefits dependent on marriage of same sex couples

- 17 (1) Paragraph 18 of Schedule 9 to the Equality Act 2010 (work: exceptions) is amended as follows.
- (2) Sub-paragraph (1): for “married” substitute “within sub-paragraph (1A)”.
- (3) After sub-paragraph (1) insert—
- “(1A) A person is within this sub-paragraph if the person is—
- (a) a man who is married to a woman, or
- (b) a woman who is married to a man, or
- (c) married to a person of the same sex in a relevant gender change case.
- (1B) The reference in sub-paragraph (1A)(c) to a relevant gender change case is a reference to a case where—
- (a) the married couple were of the opposite sex at the time of their marriage, and
- (b) a full gender recognition certificate has been issued to one of the couple under the Gender Recognition Act 2004.”.

Pension Schemes Act 1993

- 18 The Pension Schemes Act 1993 is amended in accordance with paragraphs 19 to 26.
- 19 In section 8(2) (meaning of certain terms), in the definition of “guaranteed minimum pension”, after “widower’s” insert “, surviving same sex spouse’s”.
- 20 (1) Section 17 (minimum pensions for widows and widowers) is amended as follows.
- (2) Subsection (2)—
- (a) paragraph (a): after “man” insert “, or a woman in a relevant gender change case,”;
- (b) after paragraph (c) insert—
- “(d) if the earner is a man who has a guaranteed minimum under that section, the weekly rate of the widower’s pension will not be less than the surviving same sex spouse’s guaranteed minimum;
- (e) if the earner is a woman (other than in a relevant gender change case) who has a guaranteed minimum under that section, the weekly rate of the widow’s pension will not be less than the surviving same sex spouse’s guaranteed minimum.”.
- (3) Subsection (4): after “partner’s” insert “or surviving same sex spouse’s”.
- (4) Subsection (5): at the beginning insert “In the case of a woman who is the widow of a man,”.
- (5) Subsection (6)—

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- (a) at the beginning insert “In any other case,”;
 - (b) after “widower’s” insert “, widow’s”.
- (6) After subsection (9) insert—
- “(10) In relation to an earner who is a woman, a reference in this section to a relevant gender change case is a reference to a case where—
- (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
 - (b) the marriage of the earner and her widow (that ends with the earner’s death) subsisted before the time when the certificate was issued.
- (11) This section is subject to regulations under section 38A.”.
- 21 (1) Section 24D (survivors’ benefits) is amended as follows.
- (2) Subsection (2): after “earner” insert “is a man married to a woman or a woman married to a woman in a relevant gender change case, and the earner”.
- (3) Subsection (3)—
- (a) after “earner” insert “is a married woman (other than in a relevant gender change case), a man married to a man, or a civil partner, and the earner”;
 - (b) after “widower” insert “, widow”.
- (4) After subsection (3) insert—
- “(4) In relation to an earner who is a woman, a reference in this section to a relevant gender change case is a reference to a case where—
- (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
 - (b) the marriage of the earner and her widow (that ends with the earner’s death) subsisted before the time when the certificate was issued.
- (5) This section is subject to regulations under section 38A.”.
- 22 (1) Section 37 (alteration of rules of contracted-out schemes) is amended as follows.
- (2) For subsection (4) substitute—
- “(4) The reference in subsection (3) to a person entitled to receive benefits under a scheme includes a person who is so entitled by virtue of a qualifying relationship only in such cases as may be prescribed.
- (5) For that purpose a person is entitled to receive benefits by virtue of a qualifying relationship if the person is so entitled by virtue of being—
- (a) the widower of a female earner;
 - (b) the widower of a male earner;
 - (c) the widow of a female earner, except where it is a relevant gender change case; or
 - (d) the survivor of a civil partnership with an earner.
- (6) In relation to a widow of a female earner, the reference in subsection (5)(c) to a relevant gender change case is a reference to a case where—

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- (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
- (b) the marriage of the earner and her widow (that ends with the earner's death) subsisted before the time when the certificate was issued.

(7) This section is subject to regulations under section 38A.”.

23 Before section 39 insert—

“38A Regulations about relevant gender change cases

- (1) The Secretary of State may, by regulations, make provision for—
 - (a) section 17,
 - (b) section 24D, or
 - (c) section 37,
 to have its special effect in relevant gender change cases only if conditions prescribed in the regulations are met.
- (2) Regulations under subsection (1) may, in particular, prescribe conditions that relate to the provision of information by—
 - (a) one or both of the members of married same sex couples, or
 - (b) the survivors of such couples.
- (3) The Secretary of State may, by regulations, make further provision about cases where (because of regulations under subsection (1))—
 - (a) section 17,
 - (b) section 24D, or
 - (c) section 37,
 does not have its special effect in relevant gender change cases.
- (4) Regulations under subsection (3) may, in particular, provide for the section in question to have its ordinary effect in relevant gender change cases.
- (5) Regulations under subsection (1) or (3) may, in particular, modify or disapply any enactment that concerns information relating to—
 - (a) the gender or sex of a person, or
 - (b) the change of gender or sex of a person,
 including any enactment that concerns requests for, or disclosure of, such information.
- (6) In this section, in relation to section 17, 24D or 37—
 - (a) “relevant gender change case” has the same meaning as in that section;
 - (b) “special effect” means the effect which the section has (if regulations under subsection (1) of this section are ignored) in relation to relevant gender change cases, insofar as that effect is different from the section's ordinary effect;
 - (c) “ordinary effect” means the effect which the section has in relation to same sex married couples in cases that are not relevant gender change cases.”.

- 24 In section 47 (further provisions about effect of entitlement to guaranteed minimum pension on payment of social security benefits), in subsection (1) after “widower” insert “, surviving same sex spouse”.
- 25 In section 84 (basis of revaluation), in subsection (5), after “widower” insert “, surviving same sex spouse”.
- 26 In Schedule 3 (methods of revaluing accrued pension benefits), in paragraph 1(1E) (b), after “widower” insert “, surviving same sex spouse”.

PART 7

PROVISIONS WHICH LIMIT EQUIVALENCE OF ALL MARRIAGES ETC

Contrary provision

- 27 (1) The relevant enactments are subject to—
- (a) the preceding provisions of this Schedule, and
 - (b) any order under sub-paragraph (3).
- (2) The relevant enactments are subject to any other contrary provision made by—
- (a) the other provisions of this Act,
 - (b) any other subordinate legislation made under this Act, and
 - (c) any new England and Wales legislation,
- including any such contrary provision contained in amendments of existing England and Wales legislation.
- (3) The Secretary of State may by order—
- (a) provide that a relevant enactment has effect subject to provision made by the order, or
 - (b) specify cases in which a relevant enactment does not apply.
- (4) In this paragraph “relevant enactment” means—
- (a) section 11(1) and (2) and Schedule 3 (equivalence of all marriages in law), or
 - (b) section 9(6)(b) (marriage arising from conversion of civil partnership treated as having subsisted from formation of civil partnership).