
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to primary legislation as a consequence of the coming into force of the majority of the provisions of the Marriage (Same Sex Couples) Act 2013 (c. 30) (“the Act”). The Order comes into force on 13th March 2014 (except for the provision made by paragraph 31 of Schedule 1 which comes into force on 3rd June 2014). A separate Order (the Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order 2014) making consequential amendments to subordinate legislation is also coming into force on 13th March 2014.

The Order also makes consequential amendments to primary legislation which should have been made as part of the implementation of the Civil Partnership Act 2004 (c. 33) (“the 2004 Act”) and the Human Fertilisation and Embryology Act 2008 (c. 22) (“the 2008 Act”) but which were inadvertently omitted in the orders making consequential amendments to those Acts. The Order corrects these omissions.

The Order also makes provision concerning the effect of the statutory gloss set out in section 11(1) and (2) of, and paragraphs 1 to 3 of Schedule 3 to, the Act (“the gloss”). Section 11(1) provides that in the law of England and Wales, marriage has the same effect in relation to same sex couples as it has in relation to opposite sex couples. Section 11(2) provides that the law of England and Wales (including all England and Wales legislation whenever passed or made) has effect in accordance with subsection (1). Paragraphs 1 to 3 of Schedule 3 provide that, in existing English and Welsh legislation, a reference to a marriage is to be read as including a reference to the marriage of a same sex couple, a reference to a married couple is to be read as including a reference to a married same sex couple, and a reference to a person who is married is to be read as including a reference to a person who is married to a person of the same sex. Paragraph 1(2) of Schedule 3 provides that related references such as a reference to a person whose marriage has ended are to be read in the same way.

In addition, Schedule 3 to the Act provides that references to persons who are not married but living together as if they are married are to be read as including references to a same sex couple who are not married but living together as a married couple; and that a reference to a person who is living with another person as if they were married is to be read as including a reference to a person who is living with another person of the same sex as if they were married.

Paragraph 27 of Schedule 4 to the Act makes provision about when the gloss described above is subject to contrary provision i.e. disapplied or when it is to apply but subject to other provision. The Order makes contrary provision to the gloss in both primary and secondary legislation.

The Order extends only to England and Wales subject to the following exceptions: article 5 also extends to Scotland; the amendment to the 2004 Act made in paragraph 29(1) and (2) of Schedule 1 also extends to Scotland and Northern Ireland; finally, the amendment to the Family Law (Scotland) Act (2006 asp. 2) made by paragraph 31 of Schedule 1 extends only to Scotland.

As set out above, article 2 of, and Schedule 1 to, the Order make consequential amendments to primary legislation as a result of the extension of marriage to same sex couples, as well as consequential amendments as a result of the 2004 Act and the 2008 Act.

Paragraph 1 of Schedule 1 amends section 6(9)(a) of the Metropolitan Public Carriage Act 1869 (c. 115) to substitute a reference to “widows” with “surviving spouse” and “surviving civil partner” so that all spouses and civil partners are caught by the section. It also repeals section 6(9)(b). This provided that a London cab order may make provision about the transfer by a married woman of her licence to her husband when she was granted the licence and then marries during its continuation.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Paragraph 2 amends the Pension Commutation Act 1871 (c. 36) to substitute a reference to “widows” with “surviving spouse”. Similar amendments are made by paragraphs 3, 6, 9, 17 and 24. In certain cases amendments also rectify the omission of references to civil partners. References to civil partners are inserted into existing provisions by paragraphs 1, 3, 6, 9, 10, 17 and 24.

Paragraphs 14 and 15 also make provision concerning the legitimacy of children born to same sex couples and make amendments to the Fatal Accidents Act 1976 (c. 30) and the Legitimacy Act 1976 (c. 31). The amendments to the Fatal Accidents Act 1976 and section 1 of the Legitimacy Act 1976 are made under the enabling powers in section 64 of the 2008 Act.

Paragraph 29 of Schedule 1 amends the 2004 Act. The amendment made by paragraph 29(2) concerns recognition of overseas marriages between two people of the same sex. Until the coming into force of the provisions of the Act regarding recognition of overseas marriages of same sex couples, a legal relationship between two persons of the same sex was treated as a civil partnership under the law of England and Wales, Scotland and Northern Ireland. Following the extension of marriage to same sex couples under the law of England and Wales, overseas marriages of same sex couples are no longer treated as civil partnerships in England and Wales but are instead recognised as marriages, in the same way as marriages of opposite sex couples. Paragraph 29(2) makes the consequential amendment (in place of paragraph 5 of Schedule 2 to the Act, which will not be commenced).

Paragraph 31 of Schedule 1 makes an amendment to section 38 of the Family Law (Scotland) Act 2006 in consequence of the repeal of the Foreign Marriage Act 1892 (c. 23) made by section 13(2) of the Act. The amendment substitutes a reference to the Foreign Marriage Act 1892 with appropriate references to the Act.

Paragraph 33 amends section 42 of the Statistics and Registration Service Act 2007 (c. 18) to ensure that the Registrar General can pass on all relevant information about marriages and civil partnerships to the Office for National Statistics.

Paragraph 35 amends section 67 of the Equality Act 2010 (c. 15) which makes provision about sex equality with reference to occupational pension schemes. Subsection (7) makes provision about the identity of a comparator of the opposite sex to a complainant to enable a decision to be made as to whether there has been sex discrimination in the context of an equal pay claim. Paragraph 35 substitutes this subsection for new provision which takes account of the fact that same sex couples can now marry. A person in a relationship with a person of the opposite sex will be compared to a person of the opposite sex to them who is also in a relationship with someone of the opposite sex; and a person in a relationship with a person of the same sex will be compared to a person of the opposite sex to them who is also in a relationship with someone of the same sex. This means that a woman married to a woman would need to compare herself to a man married to a man, rather than a man married to a woman; or she could compare herself to a man in a civil partnership.

The remaining amendments in Schedule 1 make provision amending definitions of “couple” or making other consequential provision which reflects the fact that same sex couples can now marry. In particular, paragraph 5 amends the Marriage Act 1949 (c. 76) to make provision about registered buildings. Paragraph 5(4) amends the definition of “required consents” in section 49A of the Marriage Act 1949 to include the consents required under the Marriage of Same Sex Couples (Registration of Shared Buildings) Regulations 2014 (which come into force on 13th March 2014). If a same sex couple knowingly and wilfully marries in the absence of the required consents, the marriage will be void.

Schedule 2 contains provision to which the gloss is subject and specifies cases in which the gloss is disapplied (contrary provision).

Part 1 of Schedule 2 concerns disapplication of the gloss from certain provisions of English and Welsh common law. The gloss is disapplied from the common law concerning the conferral of the titles of Queen or Princess of Wales on a person who marries or who is married to the King Regnant

or the Prince of Wales. The gloss is also disappplied as regards the conferral of a title on the spouse of a peer. This aligns the treatment of married couples of the same sex with that of civil partners.

Part 2 of Schedule 2 makes it clear that section 11(1) and (2) of the Act do not apply to any EU instruments. Paragraph 3 of Schedule 2 disapplies the effect of section 11(1) and (2).

Part 3 of Schedule 2 makes provision to which section 11(1) and (2) and Schedule 3 are subject in respect of the Armed Forces Pension Scheme Order 2005 (S.I. 2005/438), but also disapplies the gloss from various enactments. The gloss is disapplied in its entirety from the list of enactments at paragraph 5 of Schedule 2.

Schedule 3 makes consequential amendments to particular primary and secondary legislation from which Schedule 2 has disapplied the gloss and also as a result of the provision made by paragraph 4 of Schedule 2.

Paragraphs 1 and 3 amend the Pensions (Increase) Act 1971 (c. 56) and article 2 of various Pension Increase (Review) Orders to ensure that these apply appropriately in certain cases to women formerly married to men only.

Paragraph 2 similarly confines certain provisions of section 59 of the Social Security Pensions Act 1975 (c. 60) to women formerly married to men and men formerly married to women and makes consequential amendments to that section.

Paragraph 4 confines certain provisions of Schedule 5 to the Social Security Contributions and Benefits Act 1992 (c. 4) to women formerly married to men and men formerly married to women but also makes specific provision about same sex married couples, treating them on a par with civil partners.

Paragraphs 5 and 6 make similar amendments to the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172) and the Occupational Pension Schemes (Modification of Schemes) Regulations 2006 (S.I. 2006/759) to confine references to married persons as appropriate to opposite sex couples. The former also makes specific provision for same sex married couples.

Part 2 of Schedule 3 is concerned with public service pension schemes. These are occupational pension schemes established to provide pensions for particular public sector workers. Schedule 3 makes amendments in respect of various public service pension schemes which follow the approach taken in the Act.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen over and above that identified in the Impact Assessment published when the Act received Royal Assent.