

MARRIAGE (SAME SEX COUPLES) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Marriage (Same Sex Couples) Bill as introduced in the House of Commons on 9 May 2013. The Marriage (Same Sex Couples) Bill was initially introduced in the House of Commons on 24 January 2013 and has been carried over from the previous Parliamentary Session under Standing Order No 80A. In the previous Session proceedings in Public Bill Committee in the Commons were concluded, but proceedings on Report in the Commons had not begun. The Bill was not amended in Committee. These notes have been prepared by the Government Equalities Office which is part of the Department for Culture, Media and Sport, the Ministry of Justice (in respect of provisions relating to marriage law and gender recognition), the General Register Office which is part of the Home Office (in respect of provisions relating to the functions of the Registrar General), the Department for Work and Pensions (in respect of provisions relating to pensions and benefits), the Foreign and Commonwealth Office (in respect of provisions relating to consular marriages) and the Ministry of Defence (in respect of provisions relating to the Armed Forces). Their purpose is to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

Background and summary

Background

Under the current law, a marriage can only be between a man and a woman. Marriage law in England and Wales is based on where the marriage ceremony takes place. The Marriage Act 1949 (the “Marriage Act”) sets out that a marriage can be conducted either in religious buildings, through a religious ceremony, or on secular (non-religious) premises, through a civil ceremony. The Church of England and the Church in Wales have particular provision relating to their religious ceremonies.

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3. Same sex couples may register a civil partnership under the Civil Partnership Act 2004 (the “Civil Partnership Act”). A civil partnership is only available to same sex couples and can only be conducted through a civil ceremony, although this may be held in a religious building.
4. The position of the Church of England is different from that of other religious organisations primarily for three reasons:
 - as the established Church, its Canons (church laws) form part of the law of the land;
 - as the established Church, it can amend or repeal primary legislation through a Measure passed by its Synod, provided the Measure is subsequently approved by both Houses of Parliament and receives Royal Assent;
 - its clergy are under a common law duty to marry a parishioner in their parish church. The Church in Wales has a similar duty by virtue of it previously being established (it became disestablished in 1920).
5. In March 2012 the Government Equalities Office published a consultation on “Equal Civil Marriage”. This was followed on 11 December 2012 by the Government’s response to the consultation which confirmed that the Government would proceed with its proposal to extend marriage to same sex couples. The Government also decided that it would permit religious marriage ceremonies for same sex couples according to the rites of religious organisations which wished to opt in to this provision, whilst providing protection for religious organisations and individuals which do not wish to conduct marriages of same sex couples.

Summary

6. The Bill gives effect to the Government’s proposals. Its main purpose is to enable same sex couples to get married, either in a civil ceremony (i.e. a civil ceremony in a register office or approved premises e.g. a hotel) or – provided that the religious organisation concerned is in agreement – on religious premises, with the marriage being solemnized through a religious ceremony.
7. Key elements of the Bill:
 - provide that same sex couples can get married in England and Wales;
 - provide that such marriages are to be treated the same as marriages between a man and a woman in England and Wales;
 - permit marriage of same sex couples by way of a civil ceremony;
 - permit marriage of same sex couples according to religious rites and usages

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and on religious premises where a religious organisation has opted in to that process (with the exception of the Church of England and the Church in Wales);

- provide a process by which the Church in Wales can request legislative change to allow marriages of same sex couples according to its rites if it wishes to do so;
- provide that there will be no obligation or compulsion to carry out or participate in a religious marriage ceremony of a same sex couple;
- provide protection under equality law for organisations and individual ministers of religion who do not wish to marry same sex couples.

8. The Bill does not remove the availability of civil partnerships for same sex couples. Civil partnership registrations on religious premises will continue as is currently possible, i.e. on a voluntary basis for religious organisations and with no religious content. There is provision for those in a civil partnership to convert that relationship to a marriage if they choose to do so.

9. Religious organisations and their representatives who do not wish to marry same sex couples are protected from being compelled to do so through a series of religious protections, including:

- an explicit provision in the Bill that no religious organisation or representative is required to marry a same sex couple;
- amendments which the Bill makes to the Equality Act 2010, to ensure that no discrimination claims can be successfully brought against religious organisations or individuals for not marrying a couple on the ground that it is a marriage of a same sex couple;
- an “opt-in” mechanism whereby a marriage of a same sex couple cannot be carried out on religious premises or with a religious ceremony without the express consent of the religious organisation’s governing body;
- ensuring that the Bill does not interfere with Anglican Canon law;
- ensuring that the common law duty on Church of England and Church in Wales clergy to marry parishioners does not extend to same sex couples.

10. The Bill does not amend marriage legislation to allow Church of England clergy to solemnize marriage of same sex couples under its rites, and specific provision is made to ensure that the nature of marriage in Anglican Canon law is unaltered. Specific provision is made to ensure that the common law duty to marry parishioners, which applies to the clergy of both the Church of England and the Church in Wales, (and any corresponding right of parishioners to be married by such clergy) does not extend to same sex couples. In order to be able to solemnize marriages of same sex couples,

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therefore, the Church of England would have to put a Measure before Parliament amending the law to allow this to happen. The Church in Wales is unable to do this, and so the Bill provides a power by which this can be done by the Lord Chancellor, by order, should the Governing Body of the Church in Wales request it.

11. The Bill also contains a number of other related provisions, including provisions that will enable a person to change their legal gender without ending their existing marriage; provisions dealing with consular marriage and the marriage of service personnel overseas; and recognition of certain marriages of same sex couples formed outside England and Wales. There are also consequential and interpretative provisions clarifying how the new law will affect a number of matters, such as state and occupational pensions.
12. A number of the provisions of the Bill are to be given effect through subordinate legislation. Further details of these delegated powers are included in the Delegated Powers Memorandum and explained in the commentary on clauses and schedules below.

Overview of the structure of the Bill

13. The Bill is largely an amending Bill, making amendments to various pieces of primary legislation including:
 - the Marriage Act 1949,
 - the Equality Act 2010,
 - the Marriage (Registrar General's Licence) Act 1970,
 - the Matrimonial Causes Act 1973,
 - the Domicile and Matrimonial Proceedings Act 1973,
 - the Social Security Contributions and Benefits Act 1992,
 - the Pension Schemes Act 1993,
 - the Civil Partnership Act 2004,
 - the Gender Recognition Act 2004.
14. The Bill consists of 18 clauses and 7 schedules arranged as follows:
 - Part 1 (clauses 1 – 11) (*Marriage of same sex couples in England and Wales*) contains the main provisions of the Bill relating to marriage of same sex couples and Schedules 1 to 4 contain consequential and interpretative provisions relating to Part 1.
 - Part 2 (clauses 12 and 13) (*Other provisions relating to marriage and civil*

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partnership) and Schedules 5 and 6 deal with the change of legal gender of a married person or civil partner and marriage overseas.

- Part 3 (clauses 14 – 18) (*Final provisions*) and Schedule 7 contain the standard technical provisions of the Bill, including order making powers and procedures, interpretation, extent and commencement.

Territorial extent and application

General

15. The territorial extent and application of the Bill is England and Wales only, except for particular provisions as follows:

Provisions that extend to Scotland

- In Part 1 of the Bill, clause 10(3), which gives effect to Schedule 2 and Schedule 2. Schedule 2 deals with the treatment in the rest of the United Kingdom of marriages of same sex couples conducted in England and Wales.
- All of Part 2, which gives effect to Schedules 5 and 6 (provisions relating to a change in gender of a married person or civil partner and marriage overseas).
- All of Part 3.

Provisions that extend to Northern Ireland

- In Part 1 of the Bill, clause 10(3) and Schedule 2.
- All of Part 2.
- All of Part 3.

Scotland

16. The Bill provides for same sex marriage to be lawful in England and Wales only. Marriage is an area which is a devolved matter for Scotland, meaning that it is something which is within the legislative powers of the Scottish Parliament. The Bill would have certain effects in Scotland, however. It allows for the consequential amendment to legislation in Scotland, as a result of same sex marriage coming into force in England and Wales. If this happens before such time as same sex marriage is lawful in Scotland, the Bill contains a power to secure that a same sex marriage made in England and Wales is treated as a civil partnership in Scotland. The provision which the Bill makes about consular marriage and the marriage of service

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personnel overseas also involves amendment of the law in Scotland. There are also amendments to the law in Scotland as it relates to re-issuing and correcting errors in gender recognition certificates and fraud proceedings under the Gender Recognition Act 2004. Consequential provision of the law in Scotland may also be made as a result of those changes.

17. At introduction this Bill contains provisions that trigger the Sewel convention. The provisions relate to the power for the Secretary of State to make an order for a same sex marriage solemnized in England and Wales to be treated as a civil partnership under the law of Scotland; the power for the Secretary of State to make consequential amendments to the law of Scotland in devolved areas; the power for the Queen to make Orders in Council about how UK consulates overseas carry out marriages and how service personnel can marry overseas. The Sewel convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. If there are further amendments relating to such matters which trigger the convention, the consent of the Scottish Parliament will also be sought for them. In making any Order which amends Scottish legislation in devolved matters the Secretary of State or Lord Chancellor would first have to obtain the consent of the Scottish Ministers.

Wales

18. The Bill allows for same sex marriage in Wales, where the effect would be similar to that in England. Marriage of same sex couples would be equivalent to marriage of opposite sex couples except in certain cases. Existing legislation would be understood as applying to same sex couples as it has done until now to opposite sex couples. New legislation will be read as applying in the same way to same sex couples as to opposite sex couples.
19. As explained above the Bill does not permit religious marriages in accordance with the rites of the Church in Wales. However, it does contain provision for the Church in Wales to request a change in the law to enable the marriage of same sex couples according to the rites of the Church in Wales, should it wish to do so (see clause 8 of the Bill).

Northern Ireland

20. Marriage is an area which is a devolved matter for Northern Ireland. The Bill does not affect Northern Ireland directly, except as follows:
 - there are amendments to the law in Northern Ireland as it relates to re-issuing and correcting errors in gender recognition certificates and fraud

proceedings under the Gender Recognition Act 2004;

- the Bill provides that marriages of same sex couples under the law of England and Wales will be treated as civil partnerships under the law of Northern Ireland.

21. The UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters in Northern Ireland except with the agreement of the Northern Ireland legislature. There are a number of provisions within the Bill which trigger that convention. In addition to the provision of the Bill which affects Northern Ireland directly (the treatment of same sex couples married in England and Wales), the other provisions which trigger that convention are a power for the Secretary of State to make consequential amendments in devolved areas; a power to make provision by an Order in Council about how UK consulates overseas carry out marriages and how service personnel can marry overseas. If there are amendments to the Bill which trigger the convention, the agreement of the Northern Ireland Assembly will be sought for them.

COMMENTARY ON CLAUSES AND SCHEDULES

22. This section provides explanation and comment, where necessary, by clause and schedule.

Part 1 – Marriage of same sex couples in England and Wales

Extension of marriage

Clause 1 – Extension of marriage to same sex couples

23. Clause 1 makes it lawful for same sex couples to get married and sets out the legislative provisions under which same sex couples may marry. It ensures there is no obligation on the clergy of the Church of England and the Church in Wales to marry same sex couples and makes particular provision in relation to the Canons of the Church of England.
24. Under subsection (2) marriages of same sex couples may be solemnized in accordance with:
- Part 3 of the Marriage Act - which provides for civil marriage ceremonies in register offices or on approved premises such as hotels; and, if the relevant religious organisation has opted in to marry same sex couples, marriages in religious buildings (other than those of the Church of England or Church in

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Wales), or according to the usages of the Jews or Quakers and for certain marriages for detained or house-bound persons;

- Part 5 of the Marriage Act which provides for marriages in naval, military and air force chapels (but not according to the rites of the Church of England or Church in Wales);
- the Marriage (Registrar General's Licence) Act 1970 which provides for "deathbed" marriages outside registered premises; or
- an Order in Council made under Part 1 or 3 of Schedule 6 to the Bill which may provide for marriages overseas in the presence of a consular officer or for marriage overseas of armed forces personnel.

25. The effect of subsection (3) is to preserve the integrity of the Canon law of the Church of England in relation to marriage. Under the Submission of the Clergy Act 1533, Canon law cannot be contrary to general law. In particular, Canon B30 (paragraph 1) states that "The Church of England affirms, according to our Lord's teaching, that marriage is in its nature a union permanent and lifelong, for better for worse, till death them do part, of one man with one woman...".
26. Subsection (3) therefore provides that the maintenance of Canon B30 by the Church of England is not contrary to the general law which enables same sex couples to marry.
27. Subsections (4) and (5) provide that any duty of a clerk in Holy Orders of the Church of England or the Church in Wales to solemnize a marriage does not extend to same sex couples. In addition, any corresponding right of parishioners to be married by such clergy does not extend to same sex couples. The effect of this is that the common law duty on the clergy of the Church of England and the Church in Wales to marry parishioners is not extended to same sex couples.

Religious protection

Clause 2 – Marriage according to religious rites: no compulsion to solemnize etc

28. Clause 2 protects individuals and religious organisations who do not wish to conduct or participate in a religious marriage ceremony on the ground that it is a marriage of a same sex couple.
29. Subsection (1) states that individuals and religious organisations may not be compelled to carry out an "opt-in activity", which is defined in subsection (3) to mean the various types of activity relating to the decision of a religious organisation to opt

in to solemnizing marriage for same sex couples. Subsection (1) also states that they can carry out an “opt-out activity”, defined to mean an activity which reverses or modifies the effect of an opt-in activity.

30. Subsection (2) makes clear that individuals (for example, members of the clergy, and individuals authorised under the Marriage Act to be present at the solemnization of marriages on religious premises) may not be compelled to carry out, attend or take part in a religious marriage ceremony of a same sex couple. It also makes clear that individuals (for example, members of a religious organisation’s governing authority) and religious organisations may not be compelled to consent to religious marriage ceremonies of same sex couples being conducted. In each case this must be where the individuals or religious organisations do not wish to carry out the specified conduct because it concerns the marriage of a same sex couple.
31. Subsection (3) contains the definitions of “opt-in” activity and “opt-out activity”, and subsection (4) defines various other terms used in the section. It makes clear that this clause does not concern the conduct of a marriage registrar, superintendent registrar or the Registrar General.
32. Subsection (5) carries this protection into the Equality Act 2010, by inserting a new Part 6A (marriage of same sex couples in England and Wales) and paragraph 25A (marriage according to religious rites: no compulsion to solemnize etc) in Schedule 3 of that Act. Schedule 3 deals with exceptions from the prohibition on discrimination in the provision of services and the exercise of public functions. New paragraph 25A provides that it is lawful under the Equality Act for an individual or religious organisation not to carry out the conduct specified in subsection (2) where the reason is that the marriage is the marriage of a same sex couple.

Part 3 of the Marriage Act 1949

Clause 3 – Marriage for which no opt-in necessary

33. Clause 3 replaces the existing section 26 in Part 3 of the Marriage Act (marriages which may be solemnized on the authority of superintendent registrar’s certificate) with a new section 26 (marriage of a man and a woman; marriage of same sex couples for which no opt-in necessary). The new section 26 replicates the existing section 26 for marriages between a man and a woman and further authorises certain marriages of same sex couples (by civil ceremony). New section 26 therefore authorises:
 - religious marriages between a man and a woman in registered buildings;
 - civil marriages for all couples in a register office;

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- civil marriages for all couples in, for example, a hotel or other approved premises;
- religious marriages between a man and a woman by the Quakers or the Jewish religion;
- marriages between a man and a woman one of whom is house-bound or detained;
- civil marriages of a same sex couple, one of whom is house-bound or detained;
- marriages between a man and a woman in a church or chapel of the Church of England or the Church in Wales.

34. Therefore, civil marriages of same sex couples are authorised under this clause, but religious marriages of same sex couples are authorised under different provisions of the Marriage Act – these are inserted by clauses 4 to 6 of this Bill, which create arrangements for religious organisations other than the Church of England and Church in Wales to opt in to conducting marriages between same sex couples. (Particular provision for the Church in Wales is contained in clause 8.)

Clause 4 – Opt-in: marriage in places of worship

35. Clause 4 inserts a new section 26A (opt-in to marriage of same sex couples: places of worship) in the Marriage Act. The effect of the clause is to authorise religious marriages of same sex couples in places of worship (where the relevant religious organisation has opted in).

36. New section 26A (subsection (1)) permits religious marriages of same sex couples in a place of worship that has been specifically registered to solemnize marriages of same sex couples under section 43A (“an appropriately registered building”). New section 43A (inserted by paragraph 2 of Schedule 1 to the Bill) sets out the procedure for the registration of a building for religious marriage of same sex couples. Subsection (3) of section 26A provides that an application for registration under section 43A cannot be made without the written consent of the relevant governing authority of the religious organisation concerned. Subsection (4) of new section 26A defines what is meant by the “relevant governing authority”. This definition leaves it open to religious organisations to define their governing authority as they wish for the purpose of giving consent to religious marriage of same sex couples.

37. Subsection (5) of new section 26A makes clear that the opt-in does not include marriage according to the rites of the Church of England or Church in Wales. In this part of the Marriage Act, references to the Church of England include the Church in

Wales.

38. Subsection (6) makes the provisions of section 26A subject to the provisions of sections 44A to 44C of the Marriage Act and any regulations made under any of these sections. Sections 44A to 44C are new sections inserted by paragraph 3 of Schedule 1 to the Bill and make provision about registration of buildings for marriage of same sex couples where buildings are shared by more than one religious organisation.
39. Subsection (2) of clause 4 brings into effect Schedule 1 (registration of buildings etc).

Clause 5 – Opt-in: other religious ceremonies

40. Clause 5 inserts a new section 26B into the Marriage Act. As mentioned above, three of the kinds of religious marriages of a man and a woman allowed by section 26 of the Marriage Act are marriages of Quakers; marriages according to the Jewish religion; and marriages of people who are house-bound or detained, eg in prison. In these cases there is no requirement for registration of a building. New section 26B makes these kinds of marriage available to same sex couples, subject to the opt-in procedure being followed.
41. The clause provides that religious marriages of same sex couples may take place in the following circumstances (without the need for registration of a building):
 - Marriage in accordance with the religious practices of Quakers, as long as the recording clerk of the Society of Friends in London has consented to marriages of same sex couples.
 - Marriage in a religious ceremony of the Jewish religion, as long as the relevant governing authority has consented to marriages of same sex couples. In this case the relevant governing authority is a person or persons who have been designated to give such consent. Designation is made by the secretary of a synagogue who is authorised to register marriages under the Marriage Act.
 - Where one or each of a same sex couple is house-bound or detained, they can marry through a religious ceremony of any other religion except that of the Church of England or Church in Wales as long as the relevant governing authority has given consent to same sex marriages. In this case the relevant governing authority has the same definition as in section 26A of the Marriage Act. Marriages of Quakers and of people professing the Jewish religion cannot be authorised under this provision and must be authorised under the other provisions above.

Part 5 of the Marriage Act 1949

Clause 6 – Armed forces chapels

42. Clause 6 amends Part 5 of the Marriage Act, which deals with marriages in naval, military and air force chapels (for brevity referred to in these notes as military chapels). Under that Part, a marriage may take place in a military chapel which has been licensed under section 69 for the solemnization of marriages according to the rites of the Church of England or the Church in Wales, or registered under section 70 for the solemnization of other marriages. Clause 6 amends Part 5 of the Marriage Act to make provision for the registration of military chapels for the solemnization of marriages of same sex couples otherwise than in accordance with the rites of the Church of England or the Church in Wales.
43. Subsection (2) of clause 6 amends section 68 of the Marriage Act so that provisions in Part 5 of the Act which apply to marriages of same sex couples do not apply to marriages according to the rites of the Church of England or the Church in Wales.
44. Subsection (3) of clause 6 amends section 70 of the Marriage Act so as to provide that that section does not apply to marriages of same sex couples. However, subsection (4) inserts a new section 70A which allows registration of military chapels for marriages of same sex couples (otherwise than according to the rites of the Church of England or the Church in Wales). Where a chapel is registered under section 70A, section 70A(3) provides that section 70 applies (except the provision which excludes marriages of same sex couples) as if the chapel were registered under that section.
45. Under subsection (1) of the new section 70A a chapel may be registered by the Registrar General on the application of the Secretary of State. Under subsection (2) the procedural requirements of section 70 (for example, in relation to cancellation of registration, and publicising registration and cancellation) apply equally for the purposes of section 70A.
46. Subsections (5) and (6) of the new section 70A provide a power for the Secretary of State to make regulations about the registration of chapels under the section and the cancellation of registration, which may include provisions about the procedures to be followed and any consents that must be obtained before an application for registration may be made. Any such regulations must be made by the affirmative procedure.

The Marriage (Registrar General's Licence) Act 1970

Clause 7 – Opt-in: “deathbed marriages”

47. Clause 7 amends section 1 of the Marriage (Registrar General's Licence) Act 1970 so that the Registrar General can only authorise a religious marriage of a same sex couple if the relevant governing authority has consented to marriages of same sex couples. The circumstances in which a Registrar General may authorise a marriage are where one of the couple is seriously ill, for example in a hospital or at home, is not expected to recover and cannot be moved. Marriages according to the rites of the Church of England or the Church in Wales cannot be authorised under section 1 of the 1970 Act so these provisions do not apply to the Church of England or Church in Wales.

The Church in Wales

Clause 8 – Power to allow for marriage of same sex couples in Church in Wales

48. Clause 8 sets out a procedure by which the Church in Wales can choose to allow marriages of same sex couples to take place according to its rites. Its Governing Body may request that the Lord Chancellor make an order to enable it to do so, which would amend legislation as necessary (in particular the Marriage Act). The Governing Body of the Church in Wales must first resolve that the law should be so changed and the Lord Chancellor must have regard to the terms of that resolution.
49. The Church in Wales is in the same position as the Church of England as regards marriage law despite the disestablishment of the Church in Wales by virtue of the Welsh Church Act 1914. However, this disestablishment means that the Church in Wales is not itself able to put legislation before Parliament (unlike the Church of England). The power in this clause is therefore required so that the law can be changed to allow the Church in Wales to marry same sex couples (if it were to resolve to allow it), without the need for primary legislation. An order under this clause is subject to the affirmative procedure.

Other provisions relating to marriages of same sex couples

Clause 9 – Conversion of civil partnership into marriage

50. Clause 9(1) enables civil partners who had their partnership formed in England and Wales to have their partnership converted into a marriage and provides a power for the Registrar General to make regulations (subject to the approval of the Secretary of

State under subsection (6)) establishing the procedures for doing so. The use of this power is not subject to any parliamentary procedure.

51. Subsections (2) and (3) provide a power for the Secretary of State to make regulations establishing procedures for conversion of civil partnerships formed outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 of the Civil Partnership Act which deals with civil partnerships registered at British consulates or by armed forces personnel. Subsection (3) makes clear that this applies where England and Wales is the relevant part of the United Kingdom for the purposes of registration of the civil partnership under the respective Order. The use of this power is not subject to any parliamentary procedure.
52. Subsections (4) and (5) set out the scope of the regulation-making powers, including regulations about:
- the application procedure for conversion;
 - the information required to support the application;
 - declarations to support an application to convert (for example, by the civil partners themselves);
 - a requirement for applicants to appear for example before a local registrar or at a register office, in order, for example, to validate their identity;
 - conferral of functions in connection with applications to convert on, for example, the Secretary of State, the Registrar General, armed forces personnel, or other persons. These functions include record-keeping; issuing certified copies of records; conducting civil ceremonies or services following conversion into a marriage;
 - application fees and fees for connected functions.
53. Under subsection (7), the completed conversion process automatically ends the civil partnership and the couple are treated as having been married since the date the civil partnership was formed.

Clause 10 – Extra-territorial matters

54. Clause 10 provides that existing or new marriages of same sex couples that take place outside England and Wales can be recognised as marriages under the law of England and Wales. It is irrelevant whether the law of the place of marriage provides for same sex marriage before or after this provision comes into force. Clause 10 also gives effect to Schedule 2 which contains more detailed provisions (see below).

Effect of extension of marriage

Clause 11 – Effect of extension of marriage

55. Clause 11 provides that, as a result of the extension of marriage to same sex couples, marriage has the same effect in relation to such a couple as it does in relation to an opposite sex couple. It ensures that the law of England and Wales, including all existing and new England and Wales legislation, is to be interpreted as applying, where marriage is concerned, equally to same sex and opposite sex couples.
56. Subsection (3) brings into effect Schedule 3, which provides specific provision for interpretation of existing legislation (Part 1) and new legislation (Part 2). Subsection (4) brings into effect Schedule 4 which provides separately for the effect of the extension of marriage in particular cases and contains a power to make contrary provision in relation to the equivalence provisions of the Bill, including the provisions in subsections (1) and (2) of this clause and in Schedule 3.
57. Subsection (5) provides that the equivalence provisions of this clause and Schedule 3 do not affect Measures and Canons or subordinate legislation of the Church of England; and provides a power for the Secretary of State to prescribe other law relating to the Church of England which is not affected by the equivalence provisions. The use of this power is subject to negative procedure.

Part 2 – Other provisions relating to marriage and civil partnership

Clause 12 – Change of gender of married persons or civil partners

58. Clause 12 brings into effect Schedule 5 (change of gender of married persons or civil partners).

Clause 13 – Marriage overseas

59. Clause 13 brings into effect Schedule 6 (marriage overseas) and repeals the Foreign Marriage Act 1892. The Orders in Council that may be made under Schedule 6 will replace the provision currently made by the 1892 Act.

Part 3 – Final provisions

Clause 14 – Transitional and consequential provision

60. It may be necessary to deal with the transition from the situation where marriage is

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only available to a man and a woman 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. Clause 14 provides powers for the Secretary of State or Lord Chancellor to make orders that would allow these sorts of cases to be dealt with;

- transitional, transitory or saving provision in connection with the coming into force of any provision of the Bill may be made under subsection (1);
- provision in consequence of the Act may be made under subsection (2).

61. 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 affirmative procedure, otherwise the power is subject to negative procedure.

62. Subsection (4) brings into effect Schedule 7 (transitional and consequential provision etc).

Clause 15 – Orders and regulations

63. This clause is needed to set out the arrangements for how Ministers are to exercise their delegated powers. Clause 15 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 clause 8 to allow marriage of same sex couples according to the rites of the Church in Wales;
 - an order amending an Act of Parliament under clause 14(1) or (2);
 - an order under paragraph 1 of Schedule 2 amending devolved legislation in Scotland to enable marriages of same sex couples under the law of England and Wales to be treated in Scotland as civil partnerships; (except for an order made only under paragraph 1(2) of that Schedule (see below).
- negative procedure is required for:
 - an order under clause 11(5)(c);
 - an order under clause 14(1) or (2) which does not amend an Act of Parliament;
 - an order under paragraph 1(2) of Schedule 2 modifying or disapplying the provisions of an order made under paragraph 1 of Schedule 2;

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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 24 of Schedule 4, to make contrary provisions to the equivalence provisions of the Bill.
64. Subsections (4) and (5) provide for orders and regulations under the Bill to make different provision for different purposes; and to make transitional, transitory, saving or consequential provision and to repeal or revoke legislation.
65. Subsection (6) requires the Secretary of State or Lord Chancellor to obtain the consent of the Scottish Ministers and to consult the Department of Finance and Personnel in Northern Ireland before making any orders or regulations amending legislation within the devolved area of competence of the Scottish Parliament or Northern Ireland Assembly.

Clause 16 – Interpretation

66. Clause 16 defines various expressions used in the Bill:
- “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”,
 - “registrar”,
 - “Registrar General”.

Clause 17 – Extent

67. The extent of the Bill’s provisions is primarily covered in paragraph 16 above. In addition, amendments, revocations or repeals made by the Bill have the same extent as the provision being amended, revoked or repealed. Any amendments to the Social Security Contributions and Benefits Act 1992, the Pensions Act 1993 and the Human Fertilisation and Embryology Act 2008 only extend to England and Wales.

Clause 18 – Short title and commencement

68. Clause 18 comes into force on the day on which the Bill is passed. Any other provision will come into force by order of the Secretary of State.

Schedule 1 – Registration of buildings etc

69. Schedule 1 inserts provisions into the Marriage Act to deal with the details of registering buildings for marriage of same sex couples according to religious rites and usages; appointing authorised persons for that purpose; and cancelling registration, along with powers for the Registrar General to make further detailed procedural regulations.
70. Paragraph 2 of Schedule 1 inserts new sections 43A to 43D into the Marriage Act.
71. New section 43A deals with the procedures for registration of buildings as places where same sex couples can get married. This can be additional to, or separate from, registration as a place where a man and a woman can get married.
- As with registration under section 41 (for marriages between a man and a woman), a building cannot be registered for marriage of same sex couples unless it has been certified as a place of worship (subsection (1)). Part of a building may be registered (subsection (6)).
 - The application is made, as with applications to register a building for marriage of opposite sex couples, by the proprietor or trustee of the building to the superintendent registrar for the local registration district (subsection (2)).
 - The application must be accompanied by a certificate demonstrating the consent of the relevant governing authority, a copy of that consent and (if the building is not already registered as a place of worship under section 41 of the Marriage Act), a certificate of use for religious worship (subsection (3)). Certificate of use for religious worship is defined in subsection (7) and must be dated not earlier than one month before the application is made. Where the building is not already registered under section 41 (for marriages of a man and a woman) the full provisions for registration apply and the certificate of use must be signed by at least twenty householders who are members of the regular congregation who want the building to be used as a place for same sex couples to get married.
 - The local registrar must send the application with certificates to the Registrar General who must register the building (subsections (4) and (5)).

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72. New section 43B deals with the appointment of authorised persons for the purpose of marriages of same sex couples. There are already authorised persons for marriages currently: for example, a warden, vergers or other church official (he or she could be but is not normally a member of the clergy) who is appointed by the local church to keep its marriage register and to be present at the marriage and ensure the marriage certificate is signed and an entry made in the marriage register on behalf of the local civil registrar. There does not have to be an authorised person for each registered building, but if there is not, the civil registrar must be present at the marriage and ensure the certificates are signed and an entry made in the register.
73. The effect of new section 43B is that the trustees or governing body of the religious building may appoint an authorised person for marriages of same sex couples (subsection (1)) and if so, must inform the Registrar General and local superintendent registrar (subsection (2)). This is the same process as for religious marriages generally. If there is already an authorised person for the building, it will be open to the governing body or trustees to appoint that same person for marriage of same sex couples, or a different person.
74. Where the building is not registered under section 41 authorised persons can only be appointed after 1 year (to enable the registrar to oversee the initial transition to solemnizing and registering marriages) (subsections (3) – (6)). This also applies to registrations under section 41, where the building is not already registered under section 43A.
75. Quakers (Society of Friends) and people professing the Jewish religion can carry out marriages in places that are not registered. Therefore they do not now, and will not under the Bill, need to appoint authorised persons (subsection (8)).
76. New section 43C enables a building's registration to be cancelled for the conduct of marriages of same sex couples. The procedure for doing so is similar to that for applying for registration. Under subsection (4) of new section 43C, where a building is shared, new sections 44A to 44C of the Marriage Act apply (inserted by paragraph 3 of this Schedule – see paragraph 79 below) and enable a religious organisation to withdraw its registration without the agreement of other sharers.
77. New section 43D gives the Registrar General a power (with the approval of the Secretary of State) to make further procedural regulations regarding the procedures to be followed for applications to register buildings, applications for the registration of buildings to solemnize both same sex and opposite sex marriages, the procedures for appointment of authorised persons and the cancellation of registrations including procedures to be followed by superintendent registrars and for payment of fees. The

use of this power is not subject to any parliamentary procedure.

78. Paragraph 3 inserts new sections 44A – 44D into the Marriage Act. New section 44A sets out procedures where buildings are shared between more than one religious organisation by a formal sharing arrangement under the Sharing of Church Buildings Act 1969 or otherwise covered by that Act (such as university or hospital chapels). In particular, section 44A provides that agreement to registration for the purpose of religious marriage is required from the governing authority of all the organisations that share the building. All organisations do not need to consent to solemnize same sex marriages themselves but will need to agree to the premises being used to solemnize same sex marriages. A power is included for the Secretary of State to make regulations in relation to this section.
79. New section 44B provides for the cancellation of the registration of buildings shared under a formal sharing arrangement. Any application must be made in accordance with new section 43C but can be made either by the proprietor or trustee of the building or by the governing authority of any of the sharing churches. The consent of all sharing churches is not required. In the second instance, the application must be accompanied by a written confirmation that the organisation making the application is the relevant governing authority of that religion. A power is included for the Secretary of State to make regulations in relation to this section.
80. New section 44C contains a power for the Secretary of State to make regulations about the use of buildings which are used by more than one religion but are not subject to a formal sharing arrangement under or otherwise dealt with in the Sharing of Church Buildings Act 1969. In particular these regulations may provide for the registration applications and cancellation of the registration of buildings which are shared in this way.
81. New section 44D provides definitions of terms used in sections 44A - 44C such as “sharing agreement” and “shared building”. It also provides power for the Secretary of State to make regulations about the registration of shared buildings, and the use of shared premises for same sex marriages, more generally. In particular, the regulations may deal with the solemnization of marriages by Quakers or marriages according to the Jewish religion in shared buildings (including consents for registration and cancellation of registrations in these cases). Under subsection (8) of this new section, affirmative procedure is required for use of any of the powers relating to shared buildings.

Schedule 2 – Extra-territorial matters

Part 1 – English and Welsh marriages of same sex couples: Treatment in Scotland and Northern Ireland

82. Paragraph 1 gives the Secretary of State a power to make an order, after obtaining the consent of the Scottish Ministers, to provide that a marriage of a same sex couple solemnized under the law of England and Wales is to be treated under the law of Scotland as a civil partnership formed under the law of England. This is in the event that marriage of same sex couples becomes lawful in England and Wales but is not lawful in Scotland. Without legal recognition of their status, a same sex couple who married in London, for example, and subsequently moved to Scotland would not be recognised as being in any legal relationship.
83. The Secretary of State may also make a supplementary order to vary or undo this treatment as a civil partnership in particular cases. An order for treating a same sex marriage solemnized in England and Wales as a civil partnership in this way, cannot be made if same sex marriage has become lawful in Scotland. However, an order that has been made, will continue to be valid even if marriage of same sex couples becomes lawful in Scotland, though at that point the Order could be revoked. This means that couples recognised as civil partners during the period between this Bill coming into force and any Scottish legislation coming into force would not retrospectively lose rights acquired as civil partners during that period, as if they had in effect been two single persons.
84. Paragraph 2 provides that marriages of same sex couples under the law of England and Wales are to be treated as civil partnerships in Northern Ireland. It also provides an order-making power for the Secretary of State to vary or undo that treatment in particular cases.
85. The effect of an order made under paragraph 1 or the effect of paragraph 2(1) are subject to any provision to the contrary contained in certain other legislation including other provisions of, and orders made under, this Bill.

Part 2 – Marriage treated as civil partnership: dissolution, annulment or separation

86. Paragraph 4 provides that where a marriage of a same sex couple is treated as a civil partnership in Scotland or in Northern Ireland and the civil partnership is subsequently dissolved or annulled or an order is made for the separation of the civil partners, then the marriage itself will also automatically be ended or the parties will

have a judicial separation under the law of England and Wales.

87. For example, if a same sex couple get married in England and move to Scotland or Northern Ireland their union will be treated as a civil partnership in those countries. If their civil partnership was subsequently dissolved by a court in Scotland or Northern Ireland the effect of such an order will be recognised under the law of England and Wales as if the couple had divorced – their marriage will be ended. They do not have to return to England and Wales in order for this to happen.

Part 3 – United Kingdom: “Overseas relationships” in Civil Partnership Act 2004

88. Part 5 of the Civil Partnership Act defines the term “overseas relationship” and sets out the circumstances in which two people who have registered a same sex marriage or civil union overseas are to be treated as having formed a civil partnership under UK law. Paragraph 5 takes into account the fact that the Bill will make same sex marriage possible in England and Wales and as a consequence overseas marriages will be treated as marriages under the law of England and Wales.

Schedule 3 – Interpretation of legislation

89. Schedule 3 provides further provision about interpretation of references to marriages in existing (Part 1) and new (Part 2) legislation in England and Wales, in accordance with the principle set out in clause 11 that same sex marriage has the same effect in relation to same sex couples as to opposite sex married couples.

Part 1 – Existing England and Wales legislation

90. Part 1 sets out details of how particular terms used in existing legislation in England and Wales are to be read once marriage of same couples becomes possible. Paragraph 4 ensures that the terms specified in Part 1 of the Schedule are not the only terms whose meaning will change once marriage of same sex couples becomes possible. The particular terms mentioned in paragraph 1 are references to a marriage, a married couple or married person in existing legislation in England and Wales; these are to be read as also referring to a marriage of a same sex couple, married same sex couples or to a person married to someone of the same sex. Similarly, paragraph 2 particularly mentions references to couples living together as if married; these are to be read as also referring to a person who is living with someone of the same sex as if they are married.
91. Paragraph 1 sets out that references related to a marriage, a married couple or a married person in existing legislation are also to be read in the context of same sex

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marriage; and paragraph 2 sets out that references to people living together as if married are to be read in the context of people of the same sex living together as if married.

Examples

92. These instances show how such references will operate.
93. Section 105(1) of the Children Act 1989, as amended, defines a meaning of a term in that legislation:

“In this Act,

“child of the family in relation to parties to a marriage, or two people who are civil partners of each other, means –

(a) a child of both of them, and

(b) any other child ... who has been treated by both of them as a child of their family.

94. The effect of paragraph 1(2)(a) of Schedule 3 means that the reference to “parties to a marriage” is to be interpreted now as including a reference to a marriage of a same sex couple.
95. Section 144(4) of the Adoption and Children Act 2002, provides for the meaning of “a couple” for the purposes of that Act:

“In this Act, a couple means-

(a) a married couple, or

(aa) two people who are civil partners of each other, or

(b) two people (whether of different sexes or the same sex) living as partners in an enduring family relationship.”

96. Paragraph 1(2)(b) allows for the reference here to a married couple, now to include a marriage of a same sex couple.
97. Section 2(1) of the Offices, Shops and Railway Premises Act 1963 as amended states that “This Act shall not apply to any premises to which it would, apart from this subsection, apply, if none of the persons employed to work in the premises is other

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than the husband, wife, civil partnerof the person by whom they are so employed.” The terms “husband” and “wife” here refer to a person who is married for the purposes of paragraph 1(2)(c) of Schedule 3. This means that “husband” here will include a man in a same sex marriage, as well as a man married to a woman. In a similar way, “wife” will include a woman married to another woman. The result is that this section is to be construed as including both male and female same sex marriage.

98. Under paragraph 1(3), such references are also to be read across to, for example, cases where a marriage has ended. A reference to a person as a widow would be read as including a reference to a woman whose marriage to another woman ended with the other woman’s death, for example.
99. Paragraph 1(4) provides that existing England and Wales legislation which contains references to marriage, married couples or married persons will be interpreted in accordance with paragraph 1(2)(a), (b) or (c) no matter what language it uses in making reference to any of those concepts.
100. Paragraph 3 deals with legislation where there is existing provision which deals differently between a man and a woman living together as if married, and a same sex couple living together as if civil partners. The effect of this paragraph is to preserve the current effect for same sex couples despite the introduction of same sex marriage. In other words, the current distinction is maintained by which an unmarried opposite sex couple is treated as if married while a same sex couple who are not in a civil partnership is treated as if in a civil partnership.

Part 2 – New England and Wales legislation

101. Part 2 governs how new legislation made after the passing of this Bill is to be interpreted. This Part sets out the meanings of specific words which relate to marriage (such as “husband” and “wife”). It reflects the principles in the Bill, which are to put same sex marriage on an equal footing with opposite sex marriage. This will ensure that gender-specific terms such as “husband” keep their gender-specific effect. For example, “husband” will in future legislation include a man who is married to another man (but not a woman in a marriage with another woman); and “wife” will include a woman who is married to another woman (but not a man married to another man) unless specific alternative provision is made.
102. It should be noted that in Schedule 4, Part 7, paragraph 24 provides a power for the Secretary of State to modify or disapply the provisions of Schedule 3 in a specified

case.

Schedule 4 – Effect of extension of marriage: further provision

Part 1 – Private legal instruments

103. This provision means that the introduction of same sex marriage will not affect the meaning of documents drawn up prior to clause 11 coming into force. Where, for instance, a person makes a bequest to someone, which is conditional on that individual becoming or being married, marriage will refer to an opposite sex union only. The sort of documents which will be excluded from incorporating such a reference, include wills and deeds.
104. The same exclusion also would apply to any existing document which governs a charity, where that document contains any marriage-related reference. It will be understood only in terms of opposite sex marriage. For instance, where the governing document of a charity stipulates that that organisation will provide for someone who is a widow, that reference would be to a woman who had previously been married to a man only.
105. In future, after this Bill is enacted, a reference to marriage in any new document may be understood as including a same sex marriage (depending, for example, on the precise terminology of the document).

Part 2 – Presumption on birth of child to married woman

106. Part 2 makes clear that the common law presumption that a child born to a woman during her marriage is also the child of her husband (often referred to as “the presumption of legitimacy”) is not extended by clause 11. Therefore, where two women are married to each other and one of the parties to that marriage gives birth to a child, the other party will not be presumed to be the parent of that child by virtue of the common law presumption. There may be other ways in which the party to the marriage who does not give birth to the child is treated in law as the parent (for example, if that woman is treated as a parent as a result of the amendment made by paragraph 36 of Schedule 7 to this Bill to section 42 of the Human Fertilisation and Embryology Act 2008), but in all such cases it is not the common law presumption of legitimacy that treats her as the parent of that child.

Part 3 – Divorce and annulment of marriage

107. Paragraph 3 adds a new subsection 1(6) in the Matrimonial Causes Act 1973. Section

1 of that Act sets out various facts for proving that the marriage has broken down irretrievably (the ground for divorce), including in subsection 1(2) (a) that one of the parties to the marriage has committed adultery and the other finds it intolerable to live with that party. New subsection 1(6) maintains the existing definition of adultery and provides that only conduct between one party to the marriage and a person of the opposite sex may constitute adultery. This applies to both opposite sex and same sex couples.

108. Paragraph 4 amends section 12 of the Matrimonial Causes Act. The effect of this amendment is that non-consummation (either by reason of incapacity or wilful refusal) cannot be a ground on which a marriage is voidable for a same sex couple. The provisions for opposite sex couples remain unaltered.

Part 4 – Matrimonial proceedings

109. Overseas couples who enter into a same sex marriage in England and Wales but remain or become habitually resident or domiciled in another country may not be able to end their marriage in that country if it does not recognise the existence of the relationship. Part 4 therefore amends the Domicile and Matrimonial Proceedings Act 1973 to provide a "jurisdiction of last resort" so that those same sex couples who are unable to divorce or obtain other matrimonial order in the country which would normally have jurisdiction are able have their case heard in the courts in England and Wales. "Jurisdiction" means a court's authority to deal with the case. The courts in England and Wales will be able to assume jurisdiction if the couple were married in England or Wales and where it is the interests of justice to do so.
110. Paragraph 6 amends section 5 of the Domicile and Matrimonial Causes Act to set out which provisions in respect of jurisdiction in matrimonial causes do not apply to marriages of same sex couples, which is instead dealt with in Schedule 1A. Paragraph 8 inserts Schedule 1A to that Act. Paragraph 1 of Schedule 1A sets out the jurisdiction of the court over orders relating to the ending of a marriage (divorce order, judicial separation order, nullity order, presumption of death order) and orders relating to a marriage's validity, including whether or not the marriage exists. The paragraph also provides definitions.
111. Paragraph 2 of Schedule 1A provides that the court is able to deal with divorce, judicial separation and nullity cases either (a) where the court has jurisdiction because of regulations made under paragraph 5 of Schedule 1A (see below) or (b) when no court has that jurisdiction and either of the married same sex couple is domiciled in England and Wales when the case starts, or (c) when the same sex couple married under the law of England and Wales, no court has the paragraph 5 jurisdiction and it

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appears to the court in the interests of justice for it to deal with the case. In nullity cases the court additionally has jurisdiction if either of the couple died before the case started and was domiciled in England and Wales on the date of death or had been habitually resident in England and Wales throughout the year ending with the date of death.

112. The court also has jurisdiction to deal with divorce, judicial separation or nullity for the same marriage when proceedings are pending under sub-paragraphs (1) or (2).
113. Paragraph 3 of Schedule 1A says the court has jurisdiction to deal with an application for a presumption of death order if the applicant is domiciled in England and Wales on the date the case starts, or was habitually resident in England and Wales throughout the year before the date the case starts or the two people concerned married under the law of England and Wales and it appears to the court to be in the interests of justice to deal with the case.
114. Paragraph 4 of Schedule 1A says the court has jurisdiction to deal with an application for a declaration of validity of a marriage if either party to the marriage concerned is domiciled in England and Wales on the date the case starts, was habitually resident in England and Wales throughout the year before the date the case starts or died before that date and at death was either domiciled in England and Wales or had been habitually resident in England and Wales throughout the year ending with the date of death or the two people concerned married under the law of England and Wales and it appears to the court to be in the interests of justice to deal with the case.
115. Paragraph 5 of Schedule 1A enables the Lord Chancellor to make regulations about the jurisdiction of the courts to deal with divorce, judicial separation and nullity cases and about the recognition of such orders for a married same sex couple. These regulations would apply where one of the couple: is or has been habitually resident in a Member State of the European Union (EU), or is an EU national, or is domiciled in a part of the UK or the Republic of Ireland. The regulations may correspond with the terms of Council Regulation (EC) No 2201/2003 (known as Brussels IIa) on jurisdiction, recognition and enforcement of judgments in matrimonial matters and in the matters of parental responsibility. Brussels IIa deals with opposite sex marriage. The provisions on recognition of judgments can apply retrospectively. A statutory instrument containing these regulations will be subject to the affirmative resolution procedure.

Part 5 – State pensions

116. Part 5 makes provision about a person's entitlement to state pension based on a

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current or deceased spouse's or civil partner's National Insurance record. This entitlement is payable by way of a "Category B pension" under the Social Security Contributions and Benefits Act 1992.

117. Under section 48A of that Act, a married person or civil partner may be entitled to a lower-rate basic state pension based on the spouse's or civil partner's National Insurance record while the spouse or partner is alive, and up to a full basic pension and a proportion of the spouse's or civil partner's additional (earnings-related) state pension after their death. However, for married men and civil partners, entitlement is restricted to those whose wives or partners were born on or after 6 April 1950. Paragraph 9(1) replicates this restriction for a person who is married to a person of the same sex. However, paragraph 9(2) provides that the restriction does not apply to a woman in a same sex marriage whose spouse was her husband immediately before obtaining a Gender Recognition Certificate. In this situation, she would retain entitlement to state pension based on her spouse's National Insurance contributions, even if the latter was born before 6 April 1950. Paragraph 9(3) amends subsection (2ZA) of the 1992 Act which defines which contribution condition the person's spouse is required to satisfy, depending on when he or she reaches state pension age. The amendment clarifies that the condition applicable to a person who reached state pension age before 6 April 2010 can be relevant only where the spouse is a man married to a woman or, (as provided by new (2ZA) and (2ZB)), had been born a man who would have reached pension age in her birth gender before that date.
118. Under section 48B of the Social Security Contributions and Benefits Act 1992, a spouse or civil partner who is widowed over state pension age¹ may be entitled to a Category B pension comprising basic pension plus a proportion of the deceased's additional (earnings-related) state pension. Widowers and surviving civil partners cannot qualify under this provision if they reached state pension age before 6 April 2010. Instead, they may qualify under section 51 (see below), provided their late wife or partner died when also over state pension age. The practical effect of this restriction is now limited to instances where the widower or surviving civil partner reached state pension age before 6 April 2010 and the deceased spouse or partner dies while still under state pension age. The restriction, in relation to widowers, is made by paragraph 3(3) of Schedule 4 to the Pensions Act 1995, which will be read as applying to widowers of a same sex marriage by virtue of clause 11 of this Bill. Paragraph 10(1) of Schedule 4 applies an equivalent restriction to women married to women. However, paragraph 10(2) exempts women whose female spouses were formerly their

¹ Section 48B also makes provision for Category B pension for a spouse widowed under state pension age before 9 April 2001. Entitlement to Category B pension for a married person or civil partner widowed under pension age on or after that date is dealt with under section 48BB.

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husbands from this restriction. Paragraph 10(3) makes provision corresponding to that made by paragraph 9(3) relating to the applicable contribution condition to be met by the deceased spouse.

119. As noted in the previous paragraph, section 51 of the 1992 Act provides a Category B pension for a widower or surviving civil partner who reached state pension age before 6 April 2010 and is widowed when both members of the couple are over state pension age. Section 51 does not apply to widowers or civil partners who reach pension age on or after 6 April 2010, as that entitlement is picked up by either section 48A or 48B. Paragraph 11(2) of Schedule 4 inserts a new subsection (1ZA) in section 51 of the Act which extends it to include the surviving spouse of a marriage of a same sex couple so that it may provide a Category B pension where the survivor's pension age is before 6 April 2010 and both are over pension age at the date of widowhood. Paragraph 11(5) and (6) provides that this does not apply to surviving spouses who reached pension age on or after 6 April 2010 or to women whose female spouses were formerly their husbands as they will qualify under either section 48A or 48B.
120. Apart from the above elements of derived entitlements, a surviving spouse or civil partner may also be entitled to half the deceased's graduated retirement benefit (GRB) – a form of earnings-related pension that could be accrued between 1961 and 1975. Widowers and surviving civil partners who reached state pension age before 6 April 2010 may inherit GRB only if both parties are over state pension age when the spouse or civil partner dies. The provisions for GRB inheritance are in section 37 of the National Insurance Act 1965. Section 62 of the Social Security Contributions and Benefits Act 1992 provides the powers to amend the GRB provisions. Paragraph 12(2) of Schedule 4 inserts new powers in section 62 to enable regulations to be made extending section 37 of the National Insurance Act 1965 to men and their late husbands and to women and their late wives on the same terms as currently apply to widowers and surviving civil partners. Subsections (3) and (4) have the effect that a woman who was married to a transsexual woman remains entitled to half the graduated retirement benefit of the deceased without restriction – as if her spouse had not changed gender.
121. Adult dependency increases (ADIs) are an increase of state pension that could be awarded under sections 83 to 85 of the Social Security Contributions and Benefits Act 1992 and may be payable to a man in respect of a dependent wife; a wife, in respect of a dependent husband; or a person in respect of another adult (not their spouse) who has the care of the pensioner's dependent child. ADIs were abolished from 6 April 2010, but people who were already entitled to an ADI before that date continue to receive it under transitional rules. Under the changes which the Bill introduces, a married couple will be able to remain married when one member legally

changes gender. Paragraph 13 provides that an adult dependency increase continues to be payable where the parties to the marriage are still married but no longer man and wife.

122. Paragraph 14 provides that where a couple have converted their civil partnership to a marriage under clause 9 of the Bill, this cannot give rise to entitlement to state pension by virtue of being treated as married in the period preceding the conversion.

Part 6 – Occupational pensions and survivor benefits

123. Paragraph 18 of Schedule 9 to the Equality Act 2010 provides that it is not discrimination because of sexual orientation to restrict access to a benefit, facility or service that would be available to a person who was married, to someone who is in a civil partnership in relation to rights accrued before 5 December 2005 (the date the Civil Partnership Act came into force). This means that an occupational pension scheme as a minimum only has to provide survivor benefits to civil partners on rights accrued since that date. Paragraph 15 removes the word married from sub-paragraph (1) and inserts a new sub-paragraph (1A) in paragraph 18 of Schedule 9 to the Equality Act 2010. This extends the exception so that it also applies to same sex couples in the same way as to civil partners.
124. Section 8(2) of the Pensions Schemes Act 1993 defines “guaranteed minimum pension” for the purposes of that Act. Paragraph 17 extends the definition of guaranteed minimum pension to include an earner’s surviving same sex spouse’s guaranteed minimum, as determined under sections 13 to 17 of that Act. This amendment and the amendment to section 17 (see below) operate to extend entitlement to guaranteed minimum pensions to survivors of same sex marriages.
125. Section 17 of the Pensions Schemes Act 1993 requires schemes to provide that if the scheme member (the “earner”) dies leaving a widow, widower or surviving civil partner, the survivor will be entitled to a guaranteed minimum pension under the scheme. Paragraph 18 of Schedule 4 inserts new subsections (2)(d) and (e) in section 17 of that Act and amends subsections (4) – (6) so that the guaranteed minimum pension provisions apply to same sex married partners as they do for civil partners.
126. The Pensions Act 2007 inserted sections 24A to 24H into the Pensions Schemes Act 1993 to enable schemes to convert members’ rights to a guaranteed minimum pension into an ordinary scheme pension. Under section 24D the scheme must provide post-conversion benefits including pension-related survivors’ benefits. Paragraph 19 amends section 24D to ensure that survivors’ benefits are also available to survivors of same sex marriages. Survivors of same sex marriages will be entitled to the same

benefits as survivors of civil partnerships.

127. Section 37 of the Pensions Schemes Act 1993 prohibits alterations to the rules of a contracted-out scheme unless the alteration is of a prescribed description and except in prescribed circumstances. Section 37(3) prohibits such alterations by schemes that were formerly contracted-out so long as any person is entitled to receive benefits for the period when the scheme was contracted-out. Section 37(4) limits the application of section 37(3) when the beneficiary is a widower or surviving civil partner. The effect of the amendment in paragraph 20 is that this limitation may also be applied when the person entitled to receive benefits under the scheme is so entitled because of being a survivor of a marriage with a person of the same sex.
128. Section 46(1) of the Pension Schemes Act 1993 provides for the reduction of social security benefits where a person is also entitled to a guaranteed minimum pension. Section 47(1) limits the application of section 46(1) in relation to individuals who are entitled to a guaranteed minimum pension by virtue of being the widower or surviving civil partner of an earner in certain circumstances. Section 47(1) does not make any provision about widows, who are currently provided for under section 46(1). The policy intention is that survivors of same sex marriages be treated in the same manner as surviving civil partners in respect of their guaranteed minimum pension entitlement. Paragraph 21 of Schedule 4 gives effect to this policy by making provision for widows of same sex marriages in section 47(1).
129. Section 84 of the Pension Schemes Act 1993 makes provision about which method of revaluation is to be used to revalue pension benefits. Subsection (5) is amended by paragraph 22 of Schedule 4 to make reference to the guaranteed minimum of surviving same sex spouses.
130. Schedule 3 of the Pension Schemes Act 1993 makes further provision about each of the methods of revaluing accrued pension benefits. Paragraph 1(1E) defines “the accrued benefit” for the purposes of paragraph 1, which provides further detail on the final salary method of revaluation. Sub-paragraph (b) is amended by paragraph 23 of Schedule 4 to make reference to the guaranteed minimum of surviving same sex spouses.

Part 7 – General

131. Certain provisions of the Bill (referred to as the “equivalence provisions”) have a wide general effect. These provisions are:
 - clause 11(1) and (2) (which provide for marriage to have the same effect in

relation to same sex couples that it has in relation to opposite sex couples and for the law of England and Wales to have effect accordingly) and Schedule 3 (which supports clause 11(1) and (2) by making specific provision about the interpretation of legislation);

- clause 9(7)(b) (which provides that, where a marriage is converted into a civil partnership, the marriage has effect as if it had subsisted since the date when the civil partnership was formed).

132. In some cases, the wide general effect of the equivalence provisions goes too far, and so would produce results which are not in line with the policy. It is therefore necessary to ensure that the wide general effect of the equivalence provisions does not apply in particular cases, or applies in a different way from normal.
133. Some of these cases are already dealt with in the preceding provisions of Schedule 4. Other cases like this may be dealt with by an order under paragraph 24(3). The legislation which deals with cases like this is referred to as “contrary provision”.
134. Sub-paragraphs 24(1) and (2) ensure that, where cases like this are dealt with by contrary provision, that provision overrides the wide general effect of the equivalence provisions.

Schedule 5 – Change of gender of married persons or civil partners

135. Schedule 5 makes changes to the Gender Recognition Act 2004 (the “Gender Recognition Act”). The Gender Recognition Act enables transsexual people to change their legal gender by applying for a gender recognition certificate under section 1 of that Act. The issue of a full gender recognition certificate enables recipients to be recognised for all legal purposes in their new gender (“the acquired gender”). At present transsexual people who are married or in a civil partnership must end their marriage or civil partnership before a full gender recognition certificate can be issued. This is achieved by the Gender Recognition Panel issuing an interim gender recognition certificate to married applicants and applicants in civil partnerships which causes the marriage or civil partnership to become voidable. Applicants then have six months from the date of issue of the interim gender recognition certificate to apply to the court to end their marriage or civil partnership. Once a marriage or civil partnership has been annulled (or a divorce or dissolution has occurred in Scotland) the court can issue a full gender recognition certificate.
136. This Schedule amends the Gender Recognition Act to enable an existing marriages registered in England and Wales or outside the UK (“protected marriage” defined in

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paragraph 14 as a marriage under the law of England and Wales, or a marriage under the law of a country or territory outside the United Kingdom) to continue where one or both parties change their legal gender and both parties wish to remain married. It also amends that Act to enable a civil partnership (“protected civil partnership” defined in paragraph 14 as a civil partnership under the law of England and Wales) to continue where both parties change their gender simultaneously and wish to remain in their civil partnership.

137. Paragraph 2 inserts new subsections (6A), (6B) and (6C) which amend the evidence requirements in section 3 of the Gender Recognition Act. At present, section 3(6)(a) of that Act requires transsexual people who apply to the Gender Recognition Panel for a gender recognition certificate to submit a statutory declaration as to whether they are married or in a civil partnership. This enables the Panel to determine whether to issue a full gender recognition certificate (for people who are not married or in a civil partnership) or an interim certificate (for people who are married or in a civil partnership).
138. New subsection (6A) requires married applicants to include in their statutory declaration an additional declaration as to where their marriage was registered. This will enable the Panel to determine whether the marriage is a protected marriage. Where the marriage is a protected marriage, new subsection (6B) requires an application to contain a “statutory declaration of consent” by the applicant’s spouse (defined in paragraph 14 as a declaration that he or she consents to the protected marriage continuing after the issue of a full gender recognition certificate), or a statutory declaration by the applicant that his or her spouse has not made a statutory declaration of consent. If the application contains a statutory declaration of consent by the applicant’s spouse, new subsection (6C) requires the Panel to inform the spouse that an application has been made.
139. Paragraph 3 replaces existing subsections (2) and (3) of section 4 of the Gender Recognition Act (which provides for the issue of interim and full gender recognition certificates following an application) and inserts new subsections (3A) and (3B) to that section. The effect of these amendments is to enable a full certificate to be issued:
 - to single applicants (new subsection (2)(a));
 - to applicants who are party to a protected marriage and the applicant’s spouse has issued a statutory declaration of consent (new subsection (2)(b)); and
 - to applicants who are party to a protected civil partnership and the Gender

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Recognition Panel has decided to issue the other party to the civil partnership with a full gender recognition certificate (new subsection (2)(c)).

140. Interim gender recognition certificates will be issued:
- to applicants in protected marriages if the applicant's spouse has not consented to the marriage continuing (new subsection (3)(a));
 - to applicants in non-protected marriages (new subsection (3)(b));
 - to applicants in protected civil partnerships where the other party to the civil partnership has not made an application for a gender recognition certificate at the same time as the applicant or the other party has made such an application but the Panel has decided not to issue a full gender recognition certificate to him or her (new subsections (3)(c) and (3)(d); and
 - to applicants in non-protected civil partnerships (new subsection (3)(e)).
141. New subsection (3A) requires the Panel to notify an applicant's spouse where they issue a full gender recognition certificate to the applicant. New subsection (3B) provides that section 4 of the Gender Recognition Act is subject to new section 5B (inserted into that Act by paragraph 5 of this Schedule).
142. Paragraph 4 inserts new sections 4A and 4B in the Gender Recognition Act.
143. New section 4A provides for two situations ("Case A" and "Case B"). Case A provides for the situation where an applicant is in a protected marriage but his or her spouse has not issued a statutory declaration of consent. If the applicant's spouse changes his or her mind before the marriage is annulled and wishes the marriage to continue, subsection (2) provides that the applicant can apply to the Gender Recognition Panel for a full gender recognition certificate. The Panel can only issue a full gender recognition certificate to the applicant following such an application if they are satisfied that the following conditions are met:
- an interim gender recognition certificate has been issued to the applicant (subsection (2)(a));
 - the applicant was a party to a protected marriage at the time the interim gender recognition certificate was issued (subsection (2)(b));
 - the applicant is in a protected marriage (subsection (2)(c)); and
 - the applicant's spouse consents to the protected marriage continuing

(subsection (2)(d)).

144. If these conditions are not met the Gender Recognition Panel will reject an application for a full gender recognition certificate (subsection (4)). Subsection (5) sets a time limit for an application under Case A. The time limit is six months from the date on which the interim certificate was issued.
145. Case B provides for the situation where an application is made by a civil partner, an interim gender recognition certificate is issued and the couple subsequently decide to convert their civil partnership into a protected marriage under clause 9 of this Bill. Subsection (3) provides that following a conversion taking place, such applicants can apply for a full gender recognition certificate. The Panel can only issue a full gender recognition certificate to the applicant if they are satisfied that the following conditions are met:
- an interim gender recognition certificate has been issued to the applicant (subsection (3)(a));
 - the applicant was a party to a civil partnership at the time the interim gender recognition certificate was issued (subsection (3)(b));
 - the conversion application must have been made within six months of the date of issue of the interim gender recognition certificate being issued (subsection 3(c));
 - the conversion process under clause 9 (of this Bill) has resulted in the civil partnership being converted into a marriage (subsection (3)(d));
 - the applicant is a party to that marriage (subsection (3)(e)); and
 - the applicant's spouse consents to the marriage continuing (subsection (3)(f)).
146. If these conditions are not met the Panel will reject an application for a full gender recognition certificate (subsection (4)). Subsection (6) sets a time limit for conversion of an interim certificate to a full certificate under this section. The time limit is six months from the date when the civil partnership is converted to a marriage.
147. Applications under Case A and Case B require the applicant's spouse to issue a statutory declaration of consent (subsection (7)). Applications under Case B must additionally include evidence of the date on which the application for conversion under clause 9 was made and evidence that the civil partnership has been converted to

a marriage (subsection (8)).

148. Where the Panel receives an application to issue a full gender recognition certificate in either Case A or Case B, section 4A, subsection (9) requires them to notify the applicant's spouse both of the application and also of the issue of the full gender recognition certificate.
149. New section 4B provides for the situation where an applicant has made an application for a full gender recognition certificate under new section 4A but before that application can be determined the applicant's spouse dies. At present if the applicant's spouse dies within six months of the interim gender recognition certificate being issued, the applicant can apply for a full gender recognition certificate within six months from the date the death occurred (section 5(2)(b) of the Gender Recognition Act). This section may not be available to applicants if the application has not been determined within the time limit in new section 4A(5) and (6). New section 4B provides that in such cases the applicant can still rely on section 5(2)(b) to apply for a full gender recognition certificate.
150. Paragraph 5 inserts new section 5B into the Gender Recognition Act. If both parties to a protected civil partnership make successful applications to the Gender Recognition Panel, amended section 4(2)(c) of the Gender Recognition Act applies, and both parties will be entitled to full gender recognition certificates. In such cases, new section 5B enables the Panel to issue full gender recognition certificates to both parties simultaneously, ensuring that the continuity of the civil partnership is not affected by the changes to both parties legal gender.
151. Paragraph 6 amends section 6 (errors in certificates) of the Gender Recognition Act. The amendments provide for the situation where the Gender Recognition Panel or court inadvertently issues the wrong gender recognition certificate or issues a gender recognition certificate with incorrect information. New subsection (1) allows the person covered by the certificate or the Secretary of State to apply to the Panel or court who issued the certificate to issue the correct certificate or to correct information in the certificate.
152. Paragraphs 7 and 8 make consequential amendments to section 7 (applications: supplementary) and section 8 (appeals etc) of the Gender Recognition Act. Paragraph 8 also inserts new subsection (5A) into section 8 of that Act. New subsection (5A) enables an applicant's spouse to apply to the court where he or she considers that a full gender recognition certificate has been obtained by his or her spouse fraudulently.
153. Paragraph 9 inserts new section 11A in the Gender Recognition Act. Subsection (2)

provides that, throughout the United Kingdom, the continuity of a protected marriage registered under the law of England and Wales is not affected by the issuing of full gender recognition certificates to one or both of the parties to the marriage. Subsection (3)(a) provides that the continuity of a protected marriage registered under the law of a country outside the United Kingdom is not affected by the issuing of full gender recognition certificates to one or both of the parties to the marriage. However, subsection (3)(b) provides that protected marriages registered under the law of a country outside the United Kingdom are still subject to the law of the country in which they are registered despite being recognised by the law in the United Kingdom whilst the couple are resident there.

154. Paragraph 10(1) amends section 10 of the Gender Recognition Act. New subsection (1A) provides that if the Panel issue full gender recognition certificates to one or both parties in a protected marriage or both parties in a protected civil partnership, the Secretary of State must send a copy of the full gender recognition certificate(s) to the Registrar General for England and Wales.
155. Paragraph 10(2) amends Part 1 of Schedule 3 to the Gender Recognition Act. New paragraph 11A provides the Registrar General of England and Wales with a power to make regulations about the registration of qualifying marriages and civil partnerships (defined as marriages and civil partnerships registered in England and Wales where one or both parties (both parties in relation to civil partnerships) have been issued with full gender recognition certificates). In particular the regulations may provide for the maintenance of separate marriage and civil partnership registers that record details of qualifying marriages and civil partnerships.
156. Paragraph 11 inserts a new section 11B in the Gender Recognition Act. Section 11B provides that throughout the United Kingdom, the continuity of a protected civil partnership is not affected by the issuing of full gender recognition certificates to both of the parties to the civil partnership under section 4(2)(c) of that Act.
157. Paragraph 12 has the effect of disapplying section 21(2) to (5) of the Gender Recognition Act (foreign gender change and marriage). Section 21(2) to (5) provides for the situation where a transsexual person claims to have changed gender in their country of origin and married a person of the opposite sex to their acquired gender in that country or another country outside the UK. At present, these marriages have no standing under the law of England and Wales until a full gender recognition certificate has been issued by the Gender Recognition Panel because, the law of the England and Wales regards the parties as having not been respectively male and female when the marriage was solemnized. As marriages in England and Wales will now be available to legally same sex couples these sections can be disapplied for the purposes of the

law of England and Wales.

158. Paragraph 13 makes consequential amendment to section 22 of the Gender Recognition Act.
159. Paragraph 14 inserts the definitions of “protected civil partnership”, “protected marriage” and “statutory declaration of consent” in section 25 of the Gender Recognition Act (interpretation).

Schedule 6 – Marriage overseas

160. Schedule 6 deals with marriages (including marriages of same sex couples) in British consulates overseas; certificates of no impediment issued to facilitate overseas marriages and civil partnerships carried out under local laws, indicating that the relevant party is entitled to get married or enter into a civil partnership; and marriages of armed forces personnel overseas.
161. The overall effect of Parts 1 and 2 is to provide a power for Her Majesty by Order in Council to legislate so that the arrangements for marriage (including marriage of same sex couples) in overseas consulates and the issuing of certificates of no impediment are aligned with the existing arrangements for civil partnership registration in overseas consulates. The provisions in Parts 1 and 2 thus largely replicate sections 210 (Registration at British consulates etc), 240 (certificates of no impediment to overseas relationships) and 244 (Orders in Council: supplementary) of the Civil Partnership Act. The Civil Partnership Act (through the Civil Partnership (Registration Abroad and Certificates) Order 2005), allows the provisions of the Foreign Marriage Act 1892 to be replicated. The effect of Part 3 is to provide for a very similar power for Her Majesty by Order in Council to legislate to enable service personnel and accompanying civilians (including same sex couples) to marry overseas.

Part 1 – Consular marriage under UK law

162. Paragraph 1(1) provides a power for Her Majesty by Order in Council to make provision for couples to marry in the presence of a registration officer outside the United Kingdom provided that the conditions in sub-paragraph (2) are met.
163. The conditions that must be satisfied in order for a consular marriage to take place are set out in sub-paragraph (2): at least one of the people proposing to marry must be a United Kingdom national; the people proposing to marry would have been eligible to marry in a specified part of the United Kingdom (this caters for a situation where

different parts of the United Kingdom allow or do not allow marriage of same sex couples); the authorities of the country or territory in which the consulate is located will not object; and either there are insufficient facilities for them to marry under the law of that country or territory or, in the case of same sex couples, they cannot be married under the law of that country or territory. For example, currently consular marriages are conducted in Saudi Arabia and five other countries in the Middle East, where there are no local facilities, and the local authorities have no objection. The United Kingdom government would need to approach host governments in countries where same sex marriage facilities do not exist to seek their approval to conduct same sex marriages.

164. Paragraph 2 allows a consular official to refuse to marry a couple if the officer thinks the marriage would be inconsistent with international law or comity of nations (the mutual respect of one nation for another's usages and practices) although there is a power to provide for an appeal against this decision in the Order in Council referred to in paragraph 1(1). The Order in Council may also include provisions that enable the marriage to be treated as if the couple had been married in the specified part of the United Kingdom for certain purposes.

Part 2 – Marriage under foreign law: certificates of no impediment

165. Part 2 (paragraph 7) provides a power for Her Majesty by Order in Council to legislate to make provision for the issue of certificates of no impediment to marriage where a United Kingdom national wishes to marry overseas according to local laws if that country or territory is prescribed in the Order in Council. The Bill contains a power to extend this to other “prescribed” persons.

Part 3 – Marriage of forces personnel under UK law

166. Part 3 provides a power for Her Majesty by Order in Council to make provision for members of the armed forces serving overseas, and accompanying civilians, to marry in the presence of a chaplain or other authorised officer. Such an Order in Council would replace the Foreign Marriage (Armed Forces) Order 1964, made under section 22 of the Foreign Marriage Act 1892, but could in addition provide for the marriage of same sex couples in prescribed countries or territories. The Order would authorise a marriage only where the couple would have been eligible to marry in a part of the United Kingdom to be determined in accordance with the Order. Thus the marriage of a same sex couple would be authorised only if the relevant part of the United Kingdom were one which permits such marriages. In relation to the marriage of a same sex couple the Order could also include provision prohibiting the use of

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particular religious rites or usages, or as to consents, for example as to the use of a military chapel for the ceremony.

Part 4 – General provisions

167. Part 4 contains procedural provisions for making Orders in Council under this Schedule. Such Orders will be subject to the affirmative resolution procedure and may amend United Kingdom legislation. These provisions are necessary to provide a mechanism to amend existing legislation, in order that the procedures for consular marriage, provision of certificates of no impediment and armed forces marriages can be modernised.

Schedule 7 – Transitional and consequential provision etc

Part 1 – Transitional and transitory provision

168. Paragraph 1 deals with transitional arrangements in relation to “approved premises”. These are premises (such as hotels) which have been approved by local authorities as venues for civil marriages and civil partnerships. The effect of paragraph 1 is that any premises in the process of applying to be approved, or already approved as a venue for marriages of opposite sex couples will automatically be approved as a venue for marriages of same sex couples. Any future applications for, and grants of, approval of premises, will be for both same sex and opposite sex civil marriage. All approved premises will be subject to the approved premises regulations (as defined) and any related guidance, on commencement of clause 11.

Part 2 – Minor and consequential amendments

169. Part 2 (paragraphs 2-19) makes amendments to the Marriage Act.
170. Paragraph 3 amends section 3 (marriages of persons under 18) of the Marriage Act. The effect of this amendment is that a person who has previously been a civil partner and whose partner has died will not need to get parental consent for marrying another person even if he or she is under 18.
171. Paragraph 4 amends section 27A of the Marriage Act to extend the provisions for requiring additional information for detained or house-bound marriages to such marriages of same sex couples.
172. Paragraph 5 inserts a new section 27D into the Marriage Act to provide that the Superintendent Registrar may require a copy of the governing body’s consent in the

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cases of marriage of same sex couples in respect of Quaker marriages and marriages under the rites of the Jewish religion, and marriage of a house-bound or detained person.

173. Paragraph 6 amends section 28A of the Marriage Act to insert a power for the Superintendent Registrar to require the relevant governing authority to give evidence of the consent required for Quaker, Jewish or detained or house-bound marriages of same sex couples.
174. Paragraph 7 amends the title of section 41 of the Marriage Act to refer to a marriage of a man and a woman and applies the provisions of section 41 only to the marriage of a man and a woman.
175. Paragraph 8 amends section 42 of the Marriage Act dealing with cancellation of registration of premises no longer used, to apply this provision only to buildings registered to carry out marriages of couples of the opposite sex.
176. Paragraph 9 amends section 43 of the Marriage Act to take account of different statutory provisions that apply to the registration of religious buildings for same sex marriages and for opposite sex marriages. The power to appoint an authorised person may be exercised within one year of the building's registration to solemnize marriages (whether marriages of a man and a woman or same sex marriages).
177. Paragraphs 10 and 11 insert and amend internal cross references in sections 44 and 45A of the Marriage Act regarding solemnization of marriages in registered buildings and solemnization of marriages at one of the parties' place of residence.
178. Paragraph 12 inserts new subsections (1A) to (1D) into section 46 of the Marriage Act to provide for a religious ceremony after a registrar's marriage of a same sex couple (except for the Church of England and Church in Wales) and providing the religious organisation has consented to such ceremonies.
179. Paragraph 13 makes consequential amendments to section 48 of the Marriage Act to ensure that a lack of consent to same sex marriages or to registration of the building in which the marriage took place on the part of the relevant governing body does not affect the validity of the marriage.
180. Paragraph 14 amends section 53 of the Marriage Act to provide that where a couple marry under the rites of the Jewish religion the secretary of their synagogue registers the marriage and where the couple are members of different synagogues, they can

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nominate which secretary registers their marriage.

181. Paragraph 15 inserts a reference to people authorised to register opposite sex marriages into section 69 of the Marriage Act (licensing of chapels for marriages according to the Church of England or Church in Wales).
182. Paragraph 16 inserts a reference to buildings registered to solemnize opposite sex marriages to section 70 of the Marriage Act (which deals with the registration of chapels for marriages otherwise than according to the rites of the Church of England or the Church in Wales).
183. Paragraph 17 inserts references to same sex marriages into section 75 of the Marriage Act (offences relating to solemnization of marriage).
184. Paragraph 18 amends section 78 of the Marriage Act (interpretation) to provide an amended definition of an "authorised person" to make clear how it applies in relation to both an opposite sex marriage ceremony and a same sex marriage ceremony and an updated definition of a "registered building".
185. Paragraph 19 amends Schedule 4 to the Marriage Act (provisions of the Act excluded or modified in their application to Naval, Military and Air Force chapels) to insert references to provisions for same sex marriages.
186. Paragraphs 20-22 amend sections 1 and 2 of the Marriage (Registrar General's Licence) Act 1970 with the effect that the Registrar General has the power to require the governing authority of the Society of Friends or Jewish faith who propose to conduct a same sex "deathbed" marriage, to provide evidence of its consent to same sex marriages.
187. Paragraphs 23 and 24 amend section 11(c) of the Matrimonial Causes Act 1973 so that the fact that a couple are not a man and a woman does not make a marriage void.
188. Paragraphs 25 and 26 make consequential amendments to the Social Security Contributions and Benefits Act 1992.
189. Paragraphs 27 and 28 make consequential amendments to section 99 of the Pension Schemes Act 1993. Section 99 sets out the duties of trustees or managers of schemes after a member has exercised the option conferred by section 95. Section 99(3)(b) refers only to the pension or benefits of a member or his widow. Paragraph 28 amends section 99(3)(b) so that it applies to the pension and benefits of a member and his or

her spouse or civil partner.

190. Paragraphs 29-32 amend the Civil Partnership Act, which sets out the provisions requiring consent where a person wishing to form a civil partnership is under 18 years of age. Subsection 4(3) of the Civil Partnership Act currently provides that the requirement for a person under 18 years of age to have the consent of an appropriate person or persons does not apply if the child is a surviving civil partner. The effect of this amendment is that a widow or widower under the age of 18 will not require the consent of another person before entering into a civil partnership.
191. Paragraphs 33-37 make provision for the general principle that the civil partnership recognitions in the Human Fertilisation and Embryology Act 2008 are extended to marriage of same sex couples.
192. Paragraphs 38-41 make amendments to the Equality Act 2010. In particular, paragraph 39 amends section 23 (comparison by reference to circumstances) to make clear that, where the protected characteristic is sexual orientation, it is not a material difference for the purposes of comparison, when considering a claim of discrimination, that a person is married to someone of the same sex while another is married to someone of the opposite sex.
193. Paragraph 41 amends Schedule 9 paragraph 2 (religious requirements relating to sex, marriage etc, sexual orientation) so that, where employment is for the purposes of an organised religion, an occupational requirement may allow a restriction that a person should not be married to someone of the same sex. This means, for example, that a church may require that a priest not be married to a person of the same sex.

SUMMARY OF THE IMPACT ASSESSMENT

194. A revised Impact Assessment (following the 2012 consultation) has been published on introduction of the Bill and will be updated as required. The Impact Assessment covers the estimated costs and benefits of the measure. The Impact Assessment shows that most costs will affect the public sector; most benefits will affect the private sector.

Public sector costs and manpower effects

195. The Government's Impact Assessment shows an overall one-off cost to the public sector of £3.3m to £4.7m at present value. This reflects the need of certain public bodies to adjust their IT systems, refine administrative processes and train staff in them in order to register and record same sex couples as married. No additional

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manpower costs are estimated. All costs are transitional costs of moving to a new system.

196. The estimated public sector costs break down as follows:

Organisation	Description	Cost (£million)
General Register Office (Home Office)	Reform Register Online (RON) IT system	2.0
Local authorities	Familiarisation costs for registrars	0.19 - 0.67
Department for Work & Pensions	Reform IT systems and update guidance	0.08
HM Revenue & Customs on behalf of DWP	IT and project costs in relation to contracted-out pensions	0.4
HM Revenue & Customs	Reform IT systems & update guidance	0.2 – 0.45
Ministry of Justice	Reform court IT system; amend court forms and leaflets	0.17 - 0.20
HM Courts & Tribunal Service	Operational changes required for Gender Recognition Panel database	0.1 – 0.3
Gender Recognition Panel	Additional operating costs associated with anticipated extra demand for Gender Recognition Certificates over 5 years	0.2 – 0.7 (spread over 5 years)
Office for National Statistics	Reform IT systems for recording marriage data	0.15 – 0.2

Note: All the costs in the table are transitional one off costs – the costs will occur in one year with the exception of the Gender Recognition Panel, which is an estimated 5 year total cost due to a likely increase in demand for Gender Recognition Certificates.

197. The table above gives the estimated costs in 2011/12 prices. Combining these costs and converting to present value gives the overall cost to the public sector of £3.3m to £4.7m.

198. In standard Impact Assessment methodology, costs and benefits are converted to present value. This adjusts for the fact that costs and benefits may be spread over time and applies a ‘discount rate’ to adjust for which year the costs fall in.

Other costs and benefits

199. The Government has not identified any imposed costs on business, based on responses

to its consultation and the reaction of the Federation of Small Businesses.

200. The Impact Assessment considers the possible economic benefits that would occur if there is an overall increase in demand (marriage of same sex couples and civil partnerships together, compared with existing numbers of civil partnerships). An increase in demand for marriage and additional ceremonies held to mark conversions from civil partnership to marriage could create extra spending in the economy. However, because the changes in demand are uncertain and because spending may not necessarily be additional, the Impact Assessment takes as its best estimate that there will be no change in demand and zero benefit; while putting forward £15.7m at present value, as a “high” estimate.

Carbon impact

201. The impact of the Bill on the environment, in terms of using raw materials for the production of guidance and similar publications, is likely to be minimal.

Compatibility with the European Convention on Human Rights

202. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Rt Hon Maria Miller MP, Secretary of State for Culture, Media and Sport and Minister for Women and Equalities, has made a statement under section 19(1)(a) of that Act that in her view the provisions of the Bill are compatible with the Convention rights.
203. The main Articles of the Convention which are potentially engaged in the Bill are: Article 9 (right to freedom of thought, conscience and religion), Article 12 (right of men and women to marry) and Article 14 (prohibiting discrimination in the field of enjoyment of rights guaranteed by the Convention). The most significant human rights implications concern the rights of same sex couples to enter into a marriage by a religious ceremony; the right of religious organisations to conduct religious marriage ceremonies of same sex couples, should they wish to; and the right of religious organisations and their representatives not to conduct religious marriage ceremonies of same sex couples, if they do not wish to.
204. The Convention does not secure any right for same sex couples to marry. There is some limited case law of the European Court of Human Rights on the issue of the right to legal recognition of same sex couples. In the case of *Schalk and Kopf v Austria*, the European Court of Human Rights made clear that Article 12 of the

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Convention does not guarantee the right to marriage for same sex couples; nor can that right be derived from Article 14 in conjunction with Article 8 (right to respect for private and family life).

205. The Bill enables but does not require religious organisations to marry same sex couples. The Government takes the view that the margin of appreciation under the Convention as regards marriage for same sex couples is wide, given the lack of consensus across Contracting States; and that Article 9 could be relied upon to argue that no religious organisation could be compelled under the Convention to conduct same sex marriage ceremonies according to religious rites, if that is against their religious doctrine.

Commencement

206. The short title of the Bill and the power to make commencement orders will be brought into force on the day on which the Bill is passed (clause 18). The remaining provisions of the Bill will be brought into force on a day or days appointed by commencement order made by the Secretary of State and provisions may be brought into force on different days and at different times for different purposes.

MARRIAGE (SAME SEX COUPLES) BILL

EXPLANATORY NOTES

These notes refer to the Marriage (Same Sex Couples) Bill as introduced in the House of Commons on 9 May 2013 [Bill 3]

*Ordered, by The House of Commons,
to be Printed, 9 May 2013.*

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PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON — THE STATIONERY OFFICE LIMITED
Printed in the United Kingdom by The Stationery Office Limited
£x.xx