

Marriage (Same Sex Couples) (Northern Ireland) Bill [HL]

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TO

Make provision for the marriage of same sex couples in Northern Ireland; to make provision for the legal recognition of the same sex marriage of armed forces personnel overseas and of other same sex marriages solemnised outside Northern Ireland; to make provision in the law of Northern Ireland for the conversion of civil partnerships to marriages and for the review of civil partnerships; to make provision for rights to pensions and social security contributions for same sex married couples; to make provision for gender change by married persons and civil partners; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

MARRIAGE OF SAME SEX COUPLES IN NORTHERN IRELAND

1 Extension of marriage to same sex couples

- (1) Marriage of same sex couples is lawful.
- (2) Article 13(1)(e) of the 1978 Order is repealed. 5
- (3) The marriage of a same sex couple may be solemnised—
 - (a) by a person appointed under Article 31 of the 2003 Order, and
 - (b) in accordance with Articles 18, 19, 20 and 21 of the 2003 Order.
- (4) Any duty of a member of the clergy to solemnise marriages (and any corresponding right of persons to have their marriages solemnised by members of the clergy) is not extended by this Act to marriages of same sex couples. 10
- (5) A “member of the clergy” includes—
 - (a) a clerk in Holy Orders of the Church of Ireland, and
 - (b) a priest in the Roman Catholic Church. 15

2 Religious protection

A religious celebrant may not be compelled by any means (including by the enforcement of a contract or a statutory or other legal requirement) –

- (a) to conduct a relevant marriage, or
- (b) to be present at, carry out, or otherwise participate in, a relevant marriage, 5

where the reason for the person not doing that thing is that the relevant marriage concerns a same sex couple.

PART 2

MARRIAGE (NORTHERN IRELAND) ORDER 2003 10

3 Objections

For Article 6 of the 2003 Order substitute –

“6 Objections

- (1) Any person may at any time before the solemnisation of a marriage in Northern Ireland make an objection in writing to the registrar. 15
- (2) If the registrar is satisfied that the objection relates to no more than a misdescription or inaccuracy in the marriage notice, the registrar must –
 - (a) notify the parties to the intended marriage;
 - (b) make such inquiries as the registrar thinks fit; and 20
 - (c) subject to the approval of the Registrar General, make any necessary correction to any document relating to the marriage.
- (3) In any other case the registrar must –
 - (a) notify the Registrar General of the objection;
 - (b) pending consideration of the objection by the Registrar General, suspend the issue of the marriage schedule (if it has not been issued); 25
 - (c) in the case of a religious marriage, if the marriage schedule has already been issued and it is practicable to do so –
 - (i) notify the officiant of the objection, and 30
 - (ii) advise the officiant not to solemnise the marriage pending consideration of the objection by the Registrar General.
- (4) If the Registrar General is satisfied that there is a legal impediment to the marriage, the Registrar General must direct the registrar to – 35
 - (a) notify the parties; and
 - (b) take all reasonable steps to ensure that the marriage does not take place.
- (5) If paragraph (4) does not apply, the Registrar General must direct the registrar to proceed under Article 7. 40
- (6) For the purposes of this Article and Article 7 there is a legal impediment to a marriage if –

- (a) that marriage would be void by virtue of Article 18 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 (N.I. 14) (prohibited degrees of relationship);
 - (b) one of the parties is, or both are, already married or a civil partner; 5
 - (c) one or both of the parties will be under the age of 16 on the date of solemnisation of the intended marriage; or
 - (d) one or both of the parties is or are incapable of understanding the nature of a marriage ceremony or of consenting to marriage.
- (7) An objection on the ground mentioned in paragraph (6)(d) must be accompanied by a supporting certificate signed by a medical practitioner. 10
- (8) A person who has submitted an objection may withdraw it at any time, but the Registrar General may have regard to an objection which has been withdrawn.” 15

PART 3

EXTRA TERRITORIAL MATTERS

4 Consular marriages

- (1) Where two people marry in accordance with an Order in Council made in pursuance of paragraph 1 of Schedule 6 to the 2013 Act and the relevant part of the United Kingdom is Northern Ireland they must be treated as if they had married in Northern Ireland. 20
- (2) A marriage solemnised in accordance with an Order in Council made in pursuance of paragraph 1 of Schedule 6 to the 2013 Act where the relevant part of the United Kingdom is Northern Ireland is valid in law as if the marriage had been solemnised in Northern Ireland with a due observance of all forms required by the law of Northern Ireland. 25
- (3) For the purposes of this section “relevant part of the United Kingdom” has the meaning assigned to it by paragraph 6 of Schedule 6 to the 2013 Act.

5 Marriage of UK forces personnel under Northern Ireland law 30

- (1) Where two people marry in accordance with an Order in Council made in pursuance of paragraph 8 of Schedule 6 to the 2013 Act and the relevant part of the United Kingdom is Northern Ireland, they must be treated as if they had married in Northern Ireland.
- (2) A marriage solemnised in accordance with an Order in Council made in pursuance of paragraph 8 of Schedule 6 to the 2013 Act where the relevant part of the United Kingdom is Northern Ireland is valid in law as if the marriage had been solemnised in Northern Ireland with a due observance of all forms required by the law of Northern Ireland. 35
- (3) For the purposes of this section “relevant part of the United Kingdom” has the meaning assigned to it by paragraph 12 of Schedule 6 to the 2013 Act. 40

6	Marriage in England and Wales	
(1)	Under the law of Northern Ireland, a marriage of a same sex couple under the law of England and Wales is to be treated as a marriage formed under the law of England and Wales (and accordingly, the spouses are to be treated as spouses).	5
(2)	Paragraphs 2 and 3 of Schedule 2 to the 2013 Act are repealed in so far as they extend to Northern Ireland.	
7	Marriage in Scotland	
(1)	Under the law of Northern Ireland, a marriage of a same sex couple under the law of Scotland is to be treated as a marriage formed under the law of Scotland (and accordingly, the spouses are to be treated as spouses).	10
(2)	Article 6 of the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 is repealed.	
8	Marriage in the Republic of Ireland	15
(1)	Under the law of Northern Ireland, a marriage of a same sex couple under the law of the Republic of Ireland is to be treated as a marriage formed under the law of the Republic of Ireland (and accordingly, the spouses are to be treated as spouses).	
(2)	Section 215 of the Civil Partnership Act 2004 does not apply to same sex marriages solemnised under the law of the Republic of Ireland.	20
9	Foreign marriages: general provision	
(1)	A marriage under the law of any country or territory outside the United Kingdom or the Republic of Ireland is not prevented from being recognised under the law of Northern Ireland only because it is the marriage of a same sex couple.	25
(2)	For the purposes of this section it is irrelevant whether the law of a particular country or territory outside the United Kingdom or the Republic of Ireland—	
(a)	already provides for marriage of same sex couples at the time when this section comes into force, or	30
(b)	provides for marriage of same sex couples from a later time.	
(3)	The Foreign Marriage Act 1892 is to be interpreted accordingly.	
10	Transitional provision	
(1)	Where a court is determining the validity of a same sex marriage solemnised prior to the commencement of this Act and in accordance with—	35
(a)	an Order in Council made in pursuance of paragraph 1 of Schedule 6 to the 2013 Act (consular marriages);	
(b)	an Order in Council made in pursuance of paragraph 8 of Schedule 6 to the 2013 Act (forces marriages);	
(c)	the law of England and Wales;	40
(d)	the law of Scotland;	

- (e) the law of the Republic of Ireland;
the court must be satisfied that the marriage was, at its inception, valid in Northern Ireland law.
- (2) Where, prior to commencement of this Act, a court has, in relation to a marriage within subsection (1)(a) to (e) – 5
- (a) determined the validity of the marriage; or
 - (b) dissolved a deemed civil partnership for that marriage,
- nothing in subsection (1) affects that determination or dissolution or any order of that court.

PART 4 10

OTHER PROVISIONS RELATING TO MARRIAGE

11 Conversion of civil partnership into marriage

- (1) The parties to a Northern Ireland civil partnership may convert their civil partnership into a marriage under a procedure established by regulations made by a statutory instrument by the Secretary of State. 15
- (2) The parties to a civil partnership within subsection (5) may convert their civil partnership into a marriage under a procedure established by regulations made by a statutory instrument by the Secretary of State.
- (3) The Secretary of State must, within the period of six months beginning with the day on which this Act is passed, lay a statutory instrument containing regulations under subsections (1) and (2) before both Houses of Parliament. 20
- (4) Regulations made under subsections (1) and (2) are subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) A civil partnership is within this subsection if – 25
- (a) it was formed within the United Kingdom in accordance with –
 - (i) Part 2 of the Civil Partnership Act 2004 in England or Wales; or
 - (ii) Part 3 of the Civil Partnership Act 2004 in Scotland, or
 - (b) it was formed outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 of the Civil Partnership Act 2004 (registration outside UK under Order in Council), and the part of the United Kingdom that was relevant for the purposes of section 210(2)(b) or (as the case may be) section 211(2)(b) of that Act was Northern Ireland. 30
- (6) Regulations under this section may in particular make – 35
- (a) provision about the making by the parties to a civil partnership of an application to convert their civil partnership into a marriage;
 - (b) provision about the information to be provided in support of an application to convert;
 - (c) provision about the making of declarations in support of an application to convert; 40
 - (d) provision for persons who have made an application to convert to appear before any person or attend at any place;
 - (e) provision conferring functions in connection with applications to convert on relevant officials, relevant armed forces personnel, or any other persons; 45

- (f) provision for fees, of such amounts as are specified in or determined in accordance with the regulations, to be payable in respect of –
- (i) the making of an application to convert;
 - (ii) the exercise of any function conferred by virtue of paragraph (e). 5
- (7) Functions conferred by virtue of subsection (6)(e) may include functions relating to –
- (a) the recording of information on the conversion of civil partnerships;
 - (b) the issuing of certified copies of any information recorded;
 - (c) the carrying out, on request, of searches of any information recorded and the provision, on request, of records of any information recorded (otherwise than in the form of certified copies); 10
 - (d) the conducting of services or ceremonies (other than religious services or ceremonies) following the conversion of a civil partnership.
- (8) Where a civil partnership is converted into a marriage under this section-- 15
- (a) the civil partnership ends on the conversion, and
 - (b) the resulting marriage is to be treated as having subsisted since the date the civil partnership was formed.
- (9) In this section –
- “Northern Ireland civil partnership” means a civil partnership which is formed by two people registering as civil partners of each other in Northern Ireland (see Part 4 of the Civil Partnership Act 2004); 20
- “relevant armed forces personnel” means –
- (a) a member of Her Majesty’s forces;
 - (b) a civilian subject to service discipline (within the meaning of the Armed Forces Act 2006); 25
- and for this purpose “Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006;
- “relevant official” means –
- (a) the Registrar General; 30
 - (b) a registrar;
 - (c) a consular officer in the service of Her Majesty’s government in the United Kingdom;
 - (d) a person authorised by the Secretary of State in respect of the solemnisation of marriages or formation of civil partnerships in a country or territory in which Her Majesty’s government in the United Kingdom has for the time being no consular representative. 35

12 Review of civil partnership

- (1) The Secretary of State must arrange – 40
- (a) for the operation and future of the Civil Partnership Act 2004 in Northern Ireland to be reviewed, and
 - (b) for a report on the outcome of the review to be produced and published.
- (2) Subsection (1) does not prevent the review from also dealing with other matters relating to civil partnership. 45

- (3) The arrangements made by the Secretary of State must provide for the review to commence not sooner than twelve months following the passing of this Act and to include a full public consultation.

13 Effect of extension of marriage

- (1) In the law of Northern Ireland, marriage has the same effect in relation to same sex couples as it has in relation to opposite sex couples. 5
- (2) The law of Northern Ireland (including all Northern Ireland legislation whenever passed or made) has effect in accordance with subsection (1).
- (3) Schedule 1 (interpretation of legislation) has effect.
- (4) Schedule 2 (effect of extension of marriage: further provision) has effect. 10
- (5) For provision about limitations on the effects of subsections (1) and (2) and Schedule 1, see paragraph 5 of Schedule 2.
- (6) In Schedules 1 and 2—
- “existing Northern Ireland legislation” means—
- (a) in the case of Northern Ireland legislation that is primary legislation, legislation passed before the end of the Session in which this Act is passed (excluding this Act), or 15
- (b) in the case of Northern Ireland legislation that is subordinate legislation, legislation made on or before the day on which this Act is passed (excluding legislation made under this Act); 20
- “new Northern Ireland legislation” means—
- (a) in the case of Northern Ireland legislation that is primary legislation, legislation passed after the end of the Session in which this Act is passed, or
- (b) in the case of Northern Ireland legislation that is subordinate legislation, legislation made after the day on which this Act is passed. 25

14 Effect of extension of marriage: pensions and social security contributions

- (1) The Secretary of State must by regulations made by statutory instrument amend the provisions of— 30
- (a) the Social Security Benefits and Contributions (Northern Ireland) 1992; and
- (b) the Pensions Schemes (Northern Ireland) Act 1993,
- to extend the same rights and entitlements of spouses to same sex married couples in Northern Ireland. 35
- (2) A statutory instrument containing regulations under subsection (1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

15 Change of gender of married persons or civil partners

- Schedule 3, which makes provision for the change of gender of married persons or civil partners, has effect. 40

PART 5

FINAL PROVISIONS

16 Transitional and consequential provision

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| (1) The Secretary of State may by regulations made by statutory instrument make such supplementary, incidental, consequential, transitional, transitory or saving provision as he or she considers appropriate – | 5 |
| (a) for the purposes of, or in consequence of, or for giving full effect to, this Act or any provision of it, | |
| (b) in connection with the coming into operation of any provision of this Act. | 10 |
| (2) A statutory instrument containing regulations under subsection (1) may amend, repeal, revoke or otherwise modify any statutory provision (including this Act). | |
| (3) In subsection (2), “modify” includes the making of additions, omissions and exceptions. | 15 |
| (4) Except as mentioned in subsection (5), a statutory instrument made under this section is subject to annulment in pursuance of a resolution of either House of Parliament. | |
| (5) Regulations under subsection (1) containing provision which adds to, replaces, repeals or omits any part of the text of Northern Ireland legislation or an Act of Parliament are not to be made unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, both Houses of Parliament. | 20 |

17 Further transitional and consequential provision

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| Schedule 4, which makes further transitional and consequential provision, has effect. | 25 |
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18 Interpretation

In this Act –

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| “1978 Order” means the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1045/1978)(N.I. 15); | 30 |
| “2003 Order” means the Marriage (Northern Ireland) Order 2003 (S.I. 413/2003)(N.I. 3); | |
| “2013 Act” means the Marriage (Same Sex Couples) Act 2013; | |
| “existing Northern Ireland legislation” has the meaning given in section 12; | 35 |
| “new Northern Ireland legislation” has the meaning given in section 12; | |
| “Northern Ireland legislation” means primary legislation and subordinate legislation which forms part of the law of Northern Ireland (whether or not it also forms part of the law of another jurisdiction); | |
| “registrar” means a registrar of births, deaths and marriages; | 40 |
| “Registrar General” means the Registrar General of Northern Ireland; | |
| “relevant marriage” means the marriage of a same sex couple. | |

For further interpretation provision relating to this Act, see Schedule 1.

19 Extent, commencement and short title

- (1) This Act extends to Northern Ireland only.
- (2) This Act may be cited as the Marriage (Same Sex Couples) (Northern Ireland) Act 2018.
- (3) The following provisions of this Act come into operation on the day on which this Act is passed – 5
 - (a) Part 3,
 - (b) Part 4,
 - (c) sections 16, 17 and 19.
- (4) The remaining provisions of this Act come into force after the period of three months, beginning with the day on which this Act is passed. 10

SCHEDULES

SCHEDULE 1

Section 13

INTERPRETATION OF LEGISLATION

PART 1

EXISTING NORTHERN IRELAND LEGISLATION

5

Interpretation of existing Northern Ireland legislation

- 1 (1) In existing Northern Ireland legislation—
 - (a) a reference to marriage is to be read as including a reference to marriage of a same sex couple;
 - (b) a reference to a married couple is to be read as including a reference to a married same sex couple; 10
 - (c) a reference to man and wife is to be read as including a reference to a married same sex couple; and
 - (d) a reference to a person who is married is to be read as including a reference to a person who is married to a person of the same sex. 15
- (2) Where sub-paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a marriage that has ended, or a reference to a person whose marriage has ended) is to be read accordingly.
- (3) For the purposes of sub-paragraphs (1) and (2) it does not matter how a reference is expressed. 20

Interpretation of legislation about couples living together as if married

- 2 (1) In existing Northern Ireland legislation—
 - (a) a reference to persons who are not married but are living together as a married couple is to be read as including a reference to a same sex couple who are not married but are living together as a married couple; 25
 - (b) a reference to a person who is living with another person as if they were married is to be read as including a reference to a person who is living with another person of the same sex as if they were married.
- (2) Where sub-paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to persons formerly living together as a married couple) is to be read accordingly. 30
- (3) For the purposes of sub-paragraphs (1) and (2) it does not matter how a reference is expressed.

- 3 (1) This paragraph applies to existing Northern Ireland legislation which deals differently with—
- (a) a man and a woman living together as if married, and
 - (b) two men, or two women, living together as if civil partners.
- (2) If two men, or two women, are living together as if married, that legislation applies to them in the way that it would apply to them if they were living together as civil partners.

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General

- 4 This Part of this Schedule does not limit section 13(1) or (2).

PART 2

10

NEW NORTHERN IRELAND LEGISLATION

- 5 (1) This paragraph applies to provision made by—
- (a) this Act and any subordinate legislation made under it, or
 - (b) any new Northern Ireland legislation,
- including any such provision which amends existing Northern Ireland legislation.
- (2) The following expressions have the meanings given—
- (a) “husband” includes a man who is married to another man;
 - (b) “wife” includes a woman who is married to another woman;
 - (c) “widower” includes a man whose marriage to another man ended with the other man’s death;
 - (d) “widow” includes a woman whose marriage to another woman ended with the other woman’s death;
- and related expressions are to be construed accordingly.
- (3) A reference to marriage of same sex couples is a reference to—
- (a) marriage between two men, and
 - (b) marriage between two women.
- (4) A reference to a marriage of a same sex couple is a reference to—
- (a) a marriage between two men, or
 - (b) a marriage between two women.
- (5) A reference to a same sex couple who are not married but are living together as a married couple is a reference to—
- (a) two men who are not married but are living together as a married couple, or
 - (b) two women who are not married but are living together as a married couple.
- (6) This Part of this Schedule does not limit section 13(1) or (2).

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SCHEDULE 2

Section 13

EFFECT OF EXTENSION OF MARRIAGE: FURTHER PROVISION

Private legal instruments: Existing instruments

- 1 (1) Section 13 does not alter the effect of any private legal instrument made before that section comes into force. 5
- (2) In this paragraph “private legal instrument” includes –
- (a) a will,
 - (b) an instrument (including a private Act) which settles property,
 - (c) an instrument (including a private Act) which provides for the use, disposal or devolution of property, and 10
 - (d) an instrument (including a private Act) which –
 - (i) establishes a body, or
 - (ii) regulates the purposes and administration of a body, (whether the body is incorporated or not and whether it is charitable or not); 15
- but (with the exception of the kinds of private Acts mentioned above) it does not include Northern Ireland legislation.

Presumption on birth of child to married woman: Common law presumption

- 2 (1) Section 13 does not extend the common law presumption that a child born to a woman during her marriage is also the child of her husband. 20
- (2) Accordingly, where a child is born to a woman during her marriage to another woman, that presumption is of no relevance to the question of who the child’s parents are.

Divorce

- 3 (1) The Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1045/1978)(N.I. 15) (divorce on breakdown of marriage) is amended as follows. 25
- (2) In Article 3, after paragraph (6) insert –
- “(7) Only conduct between the respondent and a person of the opposite sex may constitute adultery for the purposes of this section.”. 30

Annulment of marriage

- 4 In Article 14, after paragraph (1) insert –
- “(2) Sub-paragraphs (a) and (b) of paragraph (1) do not apply to the marriage of a same sex couple.”.

Provisions which can limit equivalence of all marriages etc: Contrary provision 35

- 5 (1) The relevant enactments are subject to –
- (a) the preceding provisions of this Schedule, and
 - (b) any order under sub-paragraph (3).
- (2) The relevant enactments are subject to any other contrary provision made by – 40

-
- (a) the other provisions of this Act,
(b) any other subordinate legislation made under this Act, and
(c) any new Northern Ireland legislation,
including any such contrary provision contained in amendments of existing
Northern Ireland legislation. 5
- (3) The Department may by order –
(a) provide that a relevant enactment has effect subject to provision
made by the order, or
(b) specify cases in which a relevant enactment does not apply.
- (4) In this paragraph “relevant enactment” means – 10
(a) section 11(8)(b) (marriage arising from conversion of civil
partnership treated as having subsisted from formation of civil
partnership), or
(b) section 13(1) and (2) and Schedule 2.

SCHEDULE 3

Section 15 15

CHANGE OF GENDER OF MARRIED PERSONS OR CIVIL PARTNERS

PART 1

AMENDMENTS TO THE GENDER RECOGNITION ACT 2004

- 1 The Gender Recognition Act 2004 is amended as follows.

Interpretation 20

- 2 (1) In section 25 (interpretation) –
(a) the existing words become subsection (1);
(b) in the definitions of “full gender recognition certificate” and “interim
gender recognition certificate”, for “5 or 5A” substitute “4A, 5, or
5A”. 25
- (2) After subsection (2) insert –
“(2A) A civil partnership which was registered outside the United
Kingdom under an Order in Council made under Chapter 1 of Part 5
of the Civil Partnership Act 2004 is to be treated for the purposes of
this Act as having been registered in Northern Ireland if – 30
(a) the parties to the civil partnership elected Northern Ireland
as the relevant part of the United Kingdom under the Order,
and
(b) details of the civil partnership have been sent to the Registrar
General for Northern Ireland.” 35
- (3) After subsection (3) insert –
“(3A) A marriage which was registered outside the United Kingdom under
the Foreign Marriage Act 1892 (other than a marriage registered by
virtue of section 18 of that Act) is to be treated for the purposes of this
Act as having been solemnised in Northern Ireland if details of the 40

marriage have been sent to the Registrar General for Northern Ireland.”

(4) After subsection (4) insert –

“(4A) A marriage which was solemnised outside the United Kingdom and registered under an Order in Council made under the Registration of Births, Deaths and Marriages (Special Provisions) Act 1957 is to be treated for the purposes of this Act as having been solemnised in Northern Ireland if details of the marriage have been sent to the Registrar General for Northern Ireland.” 5

(5) After subsection (5) insert – 10

“(5A) A consular marriage in relation to which the relevant part of the United Kingdom is Northern Ireland is to be treated for the purposes of this Act as having been solemnised in Northern Ireland.”

Evidence

3 (1) In section 3 (evidence), after subsection (6D) insert – 15

“(6DA) If the applicant is a party to a protected marriage solemnised in Northern Ireland, an application under section 1(1) must also include –

(a) a statutory declaration by the applicant that the applicant wishes the marriage to continue after the issue of a full gender recognition certificate (if that is the case), and 20

(b) either –

(i) a statutory declaration by the applicant’s spouse that the spouse consents to the marriage continuing after the issue of a full gender recognition certificate (“a statutory declaration of consent”) (if the spouse has made such a declaration), or 25

(ii) a statutory declaration by the applicant that no such declaration by the applicant’s spouse is included.”

(2) In subsection (6E) after “(6D)(b)(i)” insert “or (6DA)(b)(i)”. 30

(3) After subsection (6F) insert –

“(6G) If the applicant is a party to a protected marriage solemnised in Northern Ireland, an application under section 1(1) must also include a statutory declaration as to where the civil partnership was registered and, if the civil partnership was registered outside the United Kingdom, that details of the civil partnership have been sent to the Registrar General for Northern Ireland.” 35

Successful applications

4 In section 4 (successful applications) –

(a) after subsection (1A) insert – 40

“(1AB) The certificate is to be a full gender recognition certificate if the applicant is neither married nor in a civil partnership.”,

(b) in subsection (2) (substituted by paragraph 3 of Schedule 5 to the Marriage (Same Sex Couples) Act 2013) –

- (i) after first “is” insert “also”,
- (ii) paragraph (a) is repealed,
- (c) in subsection (3) (as so substituted) –
 - (i) in paragraph (b), after “subject to subsection (3C)(a)” insert “and (3G)(a),” and 5
 - (ii) in paragraph (e), after “subject to subsection (3C)(a)” insert “and (3G)(a),” and
- (d) after subsection (3F) (as inserted by the Marriage and Civil Partnership (Scotland) Act 2014) insert –
 - “(3G) The certificate is also to be a full gender recognition certificate if – 10
 - (a) the applicant is a party to a protected marriage solemnised in Northern Ireland and both parties to the marriage consent to the marriage continuing after the issue of a full gender recognition certificate, or 15
 - (b) the applicant is a party to a protected civil partnership formed in Northern Ireland and the Gender Recognition Panel has decided to issue a full gender recognition certificate to the other party to the civil partnership. 20
 - (3H) The certificate is to be an interim gender recognition certificate if –
 - (a) the applicant is a party to a protected marriage solemnised in Northern Ireland and either party to the marriage does not consent to the marriage continuing after the issue of a full gender recognition certificate, 25
 - (b) subject to subsection (2)(b), the applicant is a party to a marriage which is not a protected marriage solemnised in Northern Ireland, 30
 - (c) the applicant is a party to a protected civil partnership formed in Northern Ireland and the other party to the civil partnership has not made an application under section 1(1),
 - (d) the applicant is a party to a protected civil partnership formed in Northern Ireland and the Gender Recognition Panel has decided not to issue a full gender recognition certificate to the other party to the civil partnership, or 35
 - (e) subject to subsection (2)(c), the applicant is a party to a civil partnership which is not a protected civil partnership formed in Northern Ireland.” 40

Issue of full certificate after interim certificate

5 After section 4F insert –

“4G Married person with interim certificate: issue of full certificate (Northern Ireland) 45

- (1) A Gender Recognition Panel must issue a full gender recognition certificate to a person in either of the following cases.

- (2) Case A is where, on application by the person, the Panel is satisfied that –
- (a) an interim gender recognition certificate has been issued to that person in accordance with subsection (3H) or otherwise,
 - (b) the person was a party to a protected marriage solemnised in Northern Ireland at the time the interim gender certificate was issued, 5
 - (c) the person is still a party to that marriage, and
 - (d) the person’s spouse now consents to the marriage continuing after the issue of the full gender certificate. 10
- (3) Case B is where, on application by the person, the Panel is satisfied that –
- (a) an interim gender recognition certificate has been issued to that person in accordance with subsection (3H) or otherwise,
 - (b) the person was a party to a protected civil partnership formed in Northern Ireland or elsewhere under the Civil Partnership Act 2004 at the time the interim gender certificate was issued, 15
 - (c) the person is still a party to that civil partnership,
 - (d) that civil partnership has been converted to a marriage in accordance with regulations made under section 15 of the Marriage (Same Sex Couples (Northern Ireland) Act 2018, and 20
 - (e) the person’s spouse consents to the marriage continuing after the issue of the full gender recognition certificate. 25
- (4) If on application under subsection (2) or (3) the Panel is not satisfied that the conditions of either subsection are met, the Panel must reject the application.
- (5) An application under subsection (3) must be made within the period of six months beginning on the day on which the civil partnership becomes a marriage. 30
- (6) An application under subsection (2) or (3) must include sufficient evidence to satisfy the Panel that the conditions within the relevant subsection have been satisfied and in particular –
- (a) a statutory declaration of consent within the meaning of section 3(6D)(b)(i) made by the person’s spouse, 35
 - (b) where the application is under subsection (3), evidence of the date on which the civil partnership became a marriage.
- (7) Where an application is received under subsection (2) or (3) the Panel must give the applicant’s spouse – 40
- (a) notice of the application, and
 - (b) if the Panel grants the application, notice of the issue of the full gender recognition certificate.”

Application under section 4A: death of spouse

- 6 In section 4B(1) after “section 4A(2) or (3)” insert “or 4G(2) or (3)”. 45

Applications by both civil partners

7 After section 5D insert –

“5E Applications by both civil partners (Northern Ireland)

- (1) This section applies where the Panel decides to issue a full gender recognition certificate to a party to a protected civil partnership formed in Northern Ireland. 5
- (2) The Panel must not issue the full gender recognition certificate to that person unless the Panel issues a full gender recognition certificate to the other party to the protected civil partnership.
- (3) In such a case, the Panel must issue both certificates on the same day. 10
- (4) Those certificates take effect at the beginning of the day on which they are issued.”

Appeals etc

8 In section 8 (appeals etc) –

- (a) in subsection (1); before “5(2),” insert “4G,”; 15
- (b) in subsection (5); before “5(2),” insert “4G,”;
- (c) after subsection (5B) insert –
 - “(5C) If an application under section 1(1), 4A, 4G, 5(2), 5A(2) or 6(1) is granted, the applicant’s spouse may apply to the High Court or Court of Session to quash the decision to grant the application on the grounds that its grant was secured by fraud.”; 20
- (d) in subsection (6), after “(5B)” insert “or an application under subsection (5C)”.

Registration 25

9 (1) In section 10 (registration) after subsection (1B) insert –

- “(1C) Where a full gender recognition certificate is issued by a Gender Recognition Panel to a person who is a party to a protected marriage solemnised in Northern Ireland or a protected civil partnership formed in Northern Ireland, the Panel must send a copy of the certificate to the Registrar General for Northern Ireland.” 30

(2) In Schedule 3 after paragraph 32 insert –

“33 Registration of marriages and civil partnerships

- (1) The Registrar General, may, with the approval of the Department, make regulations about – 35
 - (a) the registration of qualifying protected marriages solemnised in Northern Ireland, and
 - (b) the registration of qualifying civil partnerships formed in Northern Ireland.
- (2) Regulations under sub-paragraph (1) may in particular make provision for fees to be payable in respect of things done under the regulations. 40

(3) Regulations under sub-paragraph (1) may make different provision for different cases or circumstances.

(4) In this section –

“Department” means the Department of Finance for Northern Ireland;

5

“qualifying civil partnership formed in Northern Ireland” means a civil partnership formed in Northern Ireland in a case where a full gender recognition certificate has been issued to each of the civil partners;

“qualifying protected marriage solemnised in Northern Ireland” means a marriage solemnised in Northern Ireland in a case where a full gender recognition certificate has been issued to one, or each, of the spouses.”

10

Continuity

10 After section 11D insert –

15

“11E Continuity: Northern Ireland

(1) This section applies in relation to a protected marriage solemnised in Northern Ireland if (by virtue of section 4(2)(b) or 4A or 4G) a full gender recognition certificate is issued to a party to the marriage.

(2) The continuity of a protected marriage solemnised in Northern Ireland is not affected by the issuing of a full gender recognition certificate.

20

(3) The continuity of a protected civil partnership formed in Northern Ireland is not affected by the issuing of full gender recognition certificates (by virtue of section 4(2)(c)) to both civil partners.”

25

Foreign gender change and marriage

11 In section 21 (foreign gender change and marriage), subsections (2) to (5) are repealed.

PART 2

ALTERNATIVE GROUNDS FOR GRANTING APPLICATIONS FOR GENDER RECOGNITION CERTIFICATES

30

Introduction

12 The Gender Recognition Act 2004 is further amended in accordance with this Part of this Schedule.

13 In section 2 (determination of applications), before subsection (3C) insert –

35

“(3BA) This section does not apply to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3E.”

Evidence for granting applications on alternative grounds

- 14 In section 3 (evidence), after subsection (10) insert –
- “(11) This section does not apply to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3E.”

5

Alternative grounds for granting applications

- 15 After section 3D insert –

“3E Alternative grounds for granting applications: Northern Ireland

- (1) This section applies to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with this section. 10
- (2) The Panel must grant the application if satisfied that the applicant complies with the requirements imposed by and under section 3F and meets the conditions in subsections (3) to (6).
- (3) The first condition is that the applicant was a party to a protected marriage solemnised in Northern Ireland or a protected civil partnership formed in Northern Ireland on or before the date the application was made. 15
- (4) The second condition is that the applicant –
- (a) was living in the acquired gender six years before the commencement of section 15 of the Marriage (Same Sex Couples) (Northern Ireland) Act 2018, 20
- (b) continued to live in the acquired gender until the date the application was made, and
- (c) intends to continue to live in the acquired gender until death. 25
- (5) The third condition is that the applicant –
- (a) has or has had gender dysphoria, or
- (b) has undergone surgical treatment for the purpose of modifying sexual characteristics.
- (6) The fourth condition is that the applicant is ordinarily resident in Northern Ireland. 30
- (7) The Panel must reject the application if not required by subsection (2) to grant it.

3F Evidence for granting applications on alternative grounds

- (1) This section applies to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3D. 35
- (2) The application must include either –
- (a) a report made by a registered medical practitioner, or
- (b) a report made by a registered psychologist practising in the field of gender dysphoria. 40
- (3) If the application is based on the applicant having or having had gender dysphoria –

- (a) the reference in subsection (2) to a registered medical practitioner is to one practising in the field of gender dysphoria, and
- (b) that subsection is not complied with unless the report includes details of the diagnosis of the applicant’s gender dysphoria. 5
- (4) Subsection (2) is not complied with in a case where –
 - (a) the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics, or
 - (b) treatment for that purpose has been prescribed or planned for the applicant, unless the report required by that subsection includes details of it. 10
- (5) The application must also include a statutory declaration by the applicant that the applicant meets the conditions in section 3D(3) and (4). 15
- (6) The application must include –
 - (a) a statutory declaration as to whether or not the applicant is married or a civil partner,
 - (b) any other information or evidence required by an order made by the Department, and 20
 - (c) any other information or evidence which the Panel may require to determine the application,
 and may include any other information or evidence which the applicant wishes to include.
- (7) If the applicant is married, the application must include a statutory declaration as to whether the marriage is a protected marriage solemnised in Northern Ireland. 25
- (8) If the applicant is married, and the marriage is a protected marriage, the application must also include –
 - (a) a statutory declaration of consent by the applicant’s spouse (if the spouse has made such a declaration), or 30
 - (b) a statutory declaration by the applicant that the applicant’s spouse has not made a statutory declaration of consent (if that is the case).
- (9) If the application includes a statutory declaration of consent by the applicant’s spouse, the Panel must give the spouse notice that the application has been made. 35
- (10) If the Panel which is to determine the application requires information or evidence under subsection (6)(c) it must give reasons for doing so.” 40

Membership of panels determining applications on alternative grounds

16 In Schedule 1 (Gender Recognition Panels), paragraph 4, after subparagraph (4) insert –

- “(5) But a Panel need not include a medical member when determining an application under section 1(1)(a) for a certificate to be granted in accordance with section 3E.” 45

SCHEDULE 4

Section 17

TRANSITIONAL AND CONSEQUENTIAL PROVISION ETC: MINOR AND CONSEQUENTIAL
AMENDMENTS

Matrimonial Causes (Northern Ireland) Order 1978

- 1 The Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1045/1978)(N.I. 15) is amended as follows. 5
- 2 After Article 13 insert –
- “13A Void marriages: additional provision about same sex couples**
- (1) If a same sex couple knowingly and wilfully intermarries, in Northern Ireland, otherwise than – 10
- (a) by a person appointed under Article 31 of the Marriage (Northern Ireland) Order 2003 (N.I. 3) and in accordance Articles 18, 19, 20 and 21 of that Order; or
- (b) by a person temporarily authorised under Article 14 of the Marriage (Northern Ireland) Order 2003 (N.I. 3) and in accordance with their authorisation under that Article 15
- the marriage is void.

Marriage (Northern Ireland) Order 2003

- 3 The Marriage (Northern Ireland) Order 2003 (S.I. 413/2003)(N.I. 3) is amended as follows. 20
- 4 (1) Article 9 (persons who may solemnise marriage) is amended as follows.
- (2) In paragraph (1) after “marriage” insert “, subject to paragraph (2),”.
- (3) After paragraph (1) insert –
- “(2) A marriage of a same sex couple may be solemnised only by – 25
- (a) a person temporarily authorised under Article 14, or
- (b) a person appointed under Article 31.”
- 5 In Article 14 of the 2003 Order, after paragraph (3) insert –
- “(4) An authorisation under paragraph (1) may authorise the solemnisation of one or more specified same sex marriages or same sex marriages within a specified period. 30
- (5) Where an authorisation is granted for a specified period under paragraph (1)(b) the Registrar General must specify whether the solemnisation of same sex marriages is authorised.
- (6) Where an authorisation is granted under this Article for the solemnisation of a same sex marriage or same sex marriages within a specified period, the Registrar General must specify the terms of the appropriate declaration to be made by the parties.” 35
- 6 In Article 15 of the 2003 Order, after paragraph (2) of that Article insert –
- “(3) Paragraph (2) does not apply to a same sex marriage solemnised pursuant to a temporary authorisation granted under Article 14 of this Order.” 40

Marriage (Same Sex Couples) (Northern Ireland) Bill [HL]

A

B I L L

To make provision for the marriage of same sex couples in Northern Ireland; to make provision for the legal recognition of the same sex marriage of armed forces personnel overseas and of other same sex marriages solemnised outside Northern Ireland; to make provision in the law of Northern Ireland for the conversion of civil partnerships to marriages and for the review of civil partnerships; to make provision for rights to pensions and social security contributions for same sex married couples; to make provision for gender change by married persons and civil partners; and for connected purposes.

Lord Hayward

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