

Draft Order laid before Parliament under paragraphs 1, 2 and 3 of Schedule 7 to the Scotland Act 1998 and section 259(8) of the Civil Partnership Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

**CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
CIVIL PARTNERSHIP
MARRIAGE**

**The Marriage and Civil Partnership (Scotland) Act
2014 and Civil Partnership Act 2004 (Consequential
Provisions and Modifications) Order 2014**

Made - - - - 2014

Coming into force in accordance with article 1(2)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2) to (5) and (7) of the Scotland Act 1998(1) and section 259(1) of the Civil Partnership Act 2004(2).

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to the Scotland Act 1998 and section 259(8) of the Civil Partnership Act 2004, a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

PART 1

INTRODUCTION

Citation and commencement

1.—(1) This Order may be cited as the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014.

(1) 1998 c.46.
(2) 2004 c.33.

(2) This Order comes into force on 16th December 2014.

Interpretation

2. In this Order—

“the 1977 Act” means the Marriage (Scotland) Act 1977(3);

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992(4);

“the 2004 Act” means the Gender Recognition Act 2004(5);

“the 2006 Act” means the Armed Forces Act 2006(6);

“the 2013 Act” means the Marriage (Same Sex Couples) Act 2013(7);

“the 2014 Act” means the Marriage and Civil Partnership (Scotland) Act 2014(8).

Extent

3.—(1) Articles 1 to 3, 7, 31, paragraph 15(7) and paragraph 16 of Schedule 5 extend to England and Wales, Scotland and Northern Ireland.

(2) Articles 12 to 30, paragraph 2(7) of Schedule 4 and paragraphs 15(1), (2), (3), (4) and 19 of Schedule 5 extend to England and Wales and Scotland only.

(3) Paragraph 15(6) of Schedule 5 extends to England and Wales only.

(4) Articles 4, 5, 8 to 11, and Schedule 1, Schedule 2, Schedule 3, Schedule 4 (except as specified in paragraph (2) of this article), Schedule 5 (except as specified in paragraphs (1), (2) and (3) of this article) and Schedule 6 extend to Scotland only.

(5) Article 6 extends to Northern Ireland only.

PART 2

CONSEQUENTIAL PROVISIONS

Meaning of marriage and related expressions: Scotland

4. Schedule 1 (meaning of marriage and related expressions: Scotland) has effect.

Contrary provision to Schedule 1 and consequential modification of enactments etc. as a result

5.—(1) Schedule 2 (which makes provision to which paragraphs 1(1) and (2) and paragraphs 2 to 4 of Schedule 1 are subject and which disapplies those provisions in specified cases) has effect.

(2) Schedule 3 (which modifies enactments etc. in consequence of the provision made by Schedule 2 to this Order) has effect.

(3) Schedule 4 (which modifies the Social Security Pensions Act 1975 and the Social Security Contributions and Benefits Act 1992 in consequence of the provision made by Schedule 2 to this Order and makes further consequential modifications to those Acts) has effect.

(3) 1977 c.15.
(4) 1992 c.4.
(5) 2004 c.7.
(6) 2006 c.52.
(7) 2013 c.30.
(8) 2014 asp 5.

PART 3

SCOTTISH SAME SEX MARRIAGE IN NORTHERN IRELAND

Treatment of Scottish same sex marriage in Northern Ireland

6.—(1) Under the law of Northern Ireland, a Scottish marriage of a same sex couple is to be treated as a civil partnership registered in Scotland (and accordingly, the spouses are to be treated as civil partners).

(2) In this Part “Scottish marriage” means—

- (a) a marriage which was solemnised in Scotland in accordance with the 1977 Act;
- (b) a marriage which was changed from a civil partnership in accordance with provision made under section 10 of the 2014 Act;
- (c) a marriage which was solemnised in accordance with Part 1 or 3 of Schedule 6 to the 2013 Act in relation to which the relevant part of the United Kingdom is Scotland;
- (d) a marriage which was changed from a civil partnership in accordance with Part 5 of this Order.

Recognition of a dissolution of a deemed civil partnership

7.—(1) If—

- (a) a final order is made in relation to the deemed civil partnership; and
- (b) the validity of that order is recognised throughout the United Kingdom,

that order has, throughout the United Kingdom, the same effect in relation to the Scottish marriage that it has in relation to the deemed civil partnership.

(2) If—

- (a) a separation order is made in relation to the relevant couple as parties to the deemed civil partnership; and
- (b) the validity of that order is recognised throughout the United Kingdom,

that order has, throughout the United Kingdom, the same effect in relation to the couple as parties to the Scottish marriage that it has in relation to them as parties to the deemed civil partnership (and has effect in relation to any other persons accordingly).

(3) In this article—

“deemed civil partnership” means the civil partnership which the actual marriage is treated as being by virtue of article 6;

“final order” means—

- (a) the dissolution or annulment of a civil partnership obtained from a court of civil jurisdiction in Northern Ireland;
- (b) an overseas dissolution or annulment;

“relevant couple” means the same sex couple who are parties to the actual marriage; and

“separation order” means—

- (a) a legal separation of the parties to a civil partnership obtained from a court of civil jurisdiction in Northern Ireland;
- (b) an overseas legal separation of the parties to a civil partnership.

PART 4

STATE PENSIONS

Category B retirement pension for married person

8.—(1) Section 48A of the 1992 Act(**9**) (Category B retirement pension for married person) does not confer a right to a Category B retirement pension on a person by reason of the person being married to a person of the same sex who was born before 6th April 1950.

(2) But that does not prevent section 48A from conferring a right to such a pension on a woman by reason of her marriage to another woman (“the spouse”) if—

- (a) the spouse is a woman by virtue of a full gender recognition certificate having been issued under the 2004 Act; and
- (b) the marriage subsisted before the time when that certificate was issued.

Category B retirement pension for widows and widowers

9.—(1) Section 48B of the 1992 Act(**10**) (Category B retirement pension for widows and widowers) does not confer a right to a Category B retirement pension on a woman who attained pensionable age before 6th April 2010 by reason of her marriage to another woman.

(2) But that does not prevent section 48B from conferring a right to such a pension on a woman by reason of her marriage to another woman (“the spouse”) if—

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

Category B retirement pension for widowers

10.—(1) Section 51(1ZA) of the 1992 Act(**11**) (category B retirement pension for widowers) does not confer a right to a Category B retirement pension on a person if the person attains pensionable age on or after 6th April 2010.

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

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

Adult dependency increases

11.—(1) In a case where a full gender recognition certificate is issued to a person under the 2004 Act—

- (a) section 83 of the 1992 Act(**12**) (pension increase (wife)) does not cease to apply by virtue of the change of gender; and

(9) Section 48A was inserted by the Pensions Act 1995 (c.26) (“the 1995 Act”), Schedule 4, paragraph 3(1) and was amended by the Civil Partnership Act 2004 (c.33), Schedule 24(3), paragraph 25; the Pensions Act 2007 (c.22) (“the 2007 Act”), Schedule 1(1), paragraph 2(3) and Schedule 2(3), paragraph 7; and the 2013 Act, Schedule 4(5), paragraph 11.

(10) Section 48B was inserted by the 1995 Act, Schedule 4, paragraph 3(1); and was amended by Civil Partnership Act 2004, Schedule 24(3), paragraph 26; the 2007 Act, Schedule 1(1), paragraph 3 and Schedule 2(3), paragraph 8; and the 2013 Act, Schedule 4(5), paragraph 12.

(11) Section 51(1ZA) was inserted by the 2013 Act, Schedule 4(5), paragraph 13.

(12) Section 83 was repealed by the 2007 Act, Schedule 7(2), paragraph 1 but is subject to savings specified in section 4 of that Act.

- (b) in the continued application of section 83 in such a case, references to a pension payable to a man, or references to his wife, are to be construed accordingly.
- (2) In a case where a full gender recognition certificate is issued to a person under the 2004 Act—
 - (a) section 84 of the 1992 Act(13) (pension increase (husband)) does not cease to apply by virtue of the change of gender; and
 - (b) in the continued application of section 84 in such a case, references to a pension payable to a woman, or references to her husband, are to be construed accordingly.

Converted or changed civil partnerships

12.—(1) This article applies where a civil partnership is converted into a marriage under section 9 of the 2013 Act, or is changed into a marriage in accordance with provision made under the 1977 Act, section 10 of the 2014 Act or Part 5 of this Order.

(2) For the purposes of section 48A of, and paragraph 5A(1)(b) of Schedule 3(14) to, the 1992 Act—

- (a) the civil partnership is to be treated as having subsisted during the period that begins with the day when it was formed and ends with the day before the conversion day; and
- (b) the marriage is to be treated as subsisting only from the conversion day.

(3) In this article “conversion day” means the day when the civil partnership is converted into a marriage or changed into a marriage.

PART 5

MARRIAGE OVERSEAS

CHAPTER 1

General

Protection of freedom of expression etc.: forces marriages

13.—(1) This article applies to any chaplain serving in any of Her Majesty’s forces in a country or territory outside the United Kingdom.

(2) For the avoidance of doubt, nothing in this Order so far as it makes provision as to the persons who may solemnise marriages of persons of the same sex affects the exercise of—

- (a) the Convention right to freedom of thought, conscience and religion;
- (b) the Convention right to freedom of expression; or
- (c) any equivalent right conferred by rule of law.

(3) In this article—

“Convention right” has the same meaning as in the Human Rights Act 1998(15); and

“Her Majesty’s forces” has the same meaning as in the 2006 Act.

(13) Section 84 was repealed by the 2007 Act, Schedule 7(2), paragraph 1 but is subject to savings specified in section 4 of that Act.

(14) Paragraph 5A of Schedule 3 was inserted by the 2007 Act, section 1(3) and amended by the 2013 Act, Schedule 4(5), paragraphs 11 and 12.

(15) 1998 c.42.

No duty to opt-in etc.: overseas same sex forces marriage

- 14.—(1) This article applies in the case of a forces marriage of a same sex couple—
- (a) which takes place in a country or territory outside the United Kingdom;
 - (b) which takes place according to religious rites and usages under article 12 of the Overseas Marriage Order; and
 - (c) where Scotland is the relevant part of the United Kingdom.
- (2) For the avoidance of doubt, nothing in this Order so far as it makes provision as to the person who may solemnise marriages of persons of the same sex imposes a duty—
- (a) on any relevant governing authority to give consent in respect of a marriage to which this article applies;
 - (b) on any person to become an authorised person (within the meaning of paragraph 12(2)(a) of Schedule 6 to the 2013 Act and article 12 of the Overseas Marriage Order) in respect of such a marriage;
 - (c) on any authorised person to solemnise such a marriage.
- (3) In this article—
- “forces marriage” has the same meaning as in paragraph 12(2) of Schedule 6 to the 2013 Act; and
- “Overseas Marriage Order” means the Overseas Marriage (Armed Forces) Order 2014⁽¹⁶⁾.

CHAPTER 2

Consular and armed forces marriage between civil partners - general

Meaning of civil partnership

15. In this Part “civil partnership” means a civil partnership which—
- (a) was registered in Scotland; or
 - (b) was registered outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 of the Civil Partnership Act 2004⁽¹⁷⁾ where—
 - (i) the parties to the civil partnership elected Scotland as the relevant part of the United Kingdom under the Order; and
 - (ii) details of the civil partnership were sent to the Registrar General of Births, Deaths and Marriages for Scotland;
- and has not been dissolved, annulled or ended by death.

Effect of consular or armed forces marriage between civil partners

16. Where a civil partnership is changed into a marriage under this Part, section 11 of the 2014 Act applies in relation to the marriage as if the civil partnership had been changed into a marriage in accordance with provision made under the 1977 Act or section 10(1) of the 2014 Act.

Modification of the 2004 Act

17.—(1) In their application to civil partnerships changed into marriages in accordance with this Part, the following provisions of the 2004 Act have effect subject to the following modifications.

⁽¹⁶⁾ S.I. 2014/1108.

⁽¹⁷⁾ 2004 c.33.

(2) In section 4C(18) (married person with interim certificate: issue of full certificate (Scotland))

(a) in subsection (3)—

(i) paragraph (c) has effect as if for the words “and the parties” to the end were substituted by “and within the period of six months beginning with the day on which that certificate was issued a declaration was signed by a registration officer or authorised person in relation to that civil partnership in accordance with Part 2 of the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014”;

(ii) paragraph (d) has effect as if for the words “submitting of notice has” were substituted by “signing of the declaration”;

(b) for subsection (8) substitute—

“(8) An application under subsection (3) must also include evidence of the declaration referred to in subsection (3)(c).”.

(3) For section 4F(19) (death of civil partner or spouse: issue of full certificate (Scotland)), substitute—

“4F Death of a civil partner or spouse: issue of full certificate (Scotland)

(1) A Gender Recognition Panel must issue a full gender recognition certificate to a person where the Panel is satisfied that—

- (a) an interim gender recognition certificate has been issued to the person;
- (b) the person was a party to a protected Scottish civil partnership at the time when the interim gender recognition certificate was issued;
- (c) the protected civil partnership was a qualifying civil partnership (within the meaning of section 5(6) of the Marriage (Scotland) Act 1977);
- (d) within the period of six months beginning with the day on which the interim gender recognition certificate was issued a declaration was signed by a registration officer or authorised person in relation to that civil partnership in accordance with Part 5 of the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014; and
- (e) the person’s spouse died—
 - (i) within the period of six months beginning with the day on which the civil partnership became a marriage; and
 - (ii) after the period of six months beginning with the day on which the interim gender recognition certificate was issued.

(2) If, on an application under subsection (1), the Panel is not satisfied—

- (a) as mentioned in that subsection; or
- (b) that the person is neither married nor a civil partner,

the Panel must reject the application.

(3) An application under subsection (1) must be made within the period of six months beginning with the day on which the death occurs.

(4) An application under subsection (1) must include evidence of—

- (a) the death of the person’s spouse and the date on which it occurred;

(18) Section 4C was inserted by the 2014 Act, schedule 2, paragraph 5. It will come into force on 16th December 2014.

(19) Section 4F was inserted by the 2014 Act, schedule 2, paragraph 5. It will come into force on 16th December 2014.

- (b) the declaration referred to in subsection (1)(d).”.

CHAPTER 3

Consular marriage between civil partners

Interpretation

18. In this Chapter—

- (a) “declaration” has the meaning given in article 21 (consular declaration);
- (b) “registration officer” has the same meaning as in paragraph 6 of Schedule 6 to the 2013 Act;
- (c) “United Kingdom national” has the same meaning as in paragraph 15 of Schedule 6 to the 2013 Act.

Countries or territories in which consular marriage between civil partners may take place

19. A registration officer may facilitate a civil partnership being changed into a marriage, where at least one of the parties is a United Kingdom national, in those countries or territories outside the United Kingdom which have notified the Secretary of State in writing that there is no objection to such changes taking place in that country or territory and which have not subsequently revoked that notice.

Consular change of civil partnership into marriage

20.—(1) Parties to a civil partnership are to be regarded as having changed their civil partnership into a marriage when they have signed the declaration and followed the procedure set out in paragraph (1) of article 22 and the registration officer has signed the declaration in accordance with paragraph (2) of that article.

- (2) No religious service is to be used during the procedure set out in that article.

Consular declaration

21. Before the parties to a civil partnership can change their civil partnership into a marriage in accordance with this Chapter each of the parties must sign a declaration containing—

- (a) the following details pertaining to each of the parties—
 - (i) forename(s);
 - (ii) surname;
 - (iii) nationality;
 - (iv) date of birth;
 - (v) sex;
 - (vi) address; and
- (b) a statement to the effect that—
 - (i) each of the parties has had, for the period of 28 days ending on the day on which the change is to be completed, their usual residence within the consular district of the registration officer;
 - (ii) the parties are in an existing civil partnership with each other;
 - (iii) each of the parties knows of no reason why the civil partnership should not be changed into a marriage.

Consular change procedure

22.—(1) The parties to a civil partnership must, in order to change their civil partnership into a marriage in accordance with this Chapter—

- (a) attend in person before the registration officer in consular premises;
- (b) provide evidence of the formation of their civil partnership with each other; and
- (c) provide such evidence as may be required by the registration officer to satisfy the registration officer of the details provided in the declaration.

(2) Once the parties to the civil partnership have signed the declaration referred to in article 20, the registration officer must, in the presence of the parties, also sign the declaration.

Duty to register civil partnerships changed into marriages

23.—(1) The registration officer for a consular district, nominated for such purposes by the Secretary of State, must maintain a register and register in it every declaration signed by the registration officer in accordance with article 22(2) (consular change procedure).

(2) Every nominated registration officer must, at such times as are determined by the Secretary of State, send to the Registrar General for England and Wales a copy of all declarations registered by the registration officer since those details were last sent, and if the officer has not registered a declaration over the relevant time period, confirmation of that fact.

(3) On receipt of the declarations in accordance with paragraph (2), the Registrar General for England and Wales must send them to the Registrar General of Births, Deaths and Marriages for Scotland.

(4) A certified copy of any entry in a register must be provided by the Secretary of State upon request by any person until such time as an extract is available from the Registrar General of Births, Deaths and Marriages for Scotland.

Power to dispense with requirements

24.—(1) If the Secretary of State is satisfied that there are good reasons why the requirement as to residence in article 21(b)(i) (consular declaration) cannot be complied with, the Secretary of State may authorise the registration officer to amend this part of the declaration to reduce the residence period.

(2) The Secretary of State must notify the registration officer in writing of the decision to reduce the residence period and provide a statement of reasons for the decision.

(3) If the Secretary of State authorises the registration officer to amend the declaration in accordance with paragraph (1), the registration officer must record the statement of reasons referred to in paragraph (2) and initial the amendment made to the declaration.

CHAPTER 4

Armed forces marriage between civil partners

Interpretation

25. In this Chapter—

- (a) a reference to a country or territory includes a reference to the waters of a country or territory;
- (b) a reference to Her Majesty's forces serving in a country or territory includes a reference to such forces serving in a ship in the waters of a country or territory;

- (c) a reference to a relevant civilian employed in a country or territory includes a reference to such a civilian employed in a ship in the waters of a country or territory;
- (d) “authorised person” has the same meaning as in paragraph 12(2)(b) of Schedule 6 to the 2013 Act;
- (e) “declaration” has the meaning given in article 28 (armed forces declaration);
- (f) “Her Majesty’s forces” has the same meaning as in the 2006 Act;
- (g) “relevant civilian” means a civilian subject to service discipline within the meaning of the 2006 Act.

Countries or territories in which armed forces marriage between civil partners may take place

26.—(1) An authorised person may facilitate a civil partnership being changed into a marriage in those countries or territories outside the United Kingdom which have notified the Secretary of State in writing that there is no objection to such changes taking place in that country or territory and which have not subsequently revoked that notice, where at least one of the parties to the civil partnership is—

- (a) a member of Her Majesty’s forces serving in the country or territory in which it is proposed they change their civil partnership into a marriage;
- (b) a relevant civilian who is employed in that country or territory;
- (c) a child of a person falling within sub-paragraph (a) or (b) whose home is with that person in that country or territory.

(2) In a case where one person (“P”) treats, or has treated, another person (“C”), as a child of the family in relation to—

- (a) a marriage to which P is or was a party; or
- (b) a civil partnership to which P is or was a party,

C is to be regarded for the purposes of paragraph (1)(c) as the child of P.

Armed forces change of civil partnership into marriage

27.—(1) Parties to a civil partnership are to be regarded as having changed their civil partnership into a marriage when they have signed the declaration and followed the procedure set out in paragraph (1) of article 29 (armed forces change procedure) and the authorised person has signed the declaration in accordance with paragraph (2) of that article.

(2) No religious service is to be used during the procedure set out in that article.

Armed forces declaration

28. Before the parties to a civil partnership can change their civil partnership into a marriage in accordance with this Chapter, each of the parties must sign a declaration containing—

- (a) the following details pertaining to each of the parties—
 - (i) forename(s);
 - (ii) surname;
 - (iii) nationality;
 - (iv) date of birth;
 - (v) sex;
 - (vi) address;

- (vii) in respect of each of the parties to the civil partnership who fall within one of the descriptions in article 26(1) (countries or territories in which armed forces marriage between civil partners may take place)—
 - (aa) where that person is a member of Her Majesty’s forces serving in the country or territory in which it is proposed they change their civil partnership into a marriage, the name and location of the unit in which that person is serving;
 - (bb) where that person is a relevant civilian employed in that country or territory, the name and location of the post where that person is employed;
 - (cc) where the person falls within the description in article 26(1)(c) (but does not fall within either paragraph (a) or (b) of that article), the information referred to in (as the case may be) head (aa) or (bb) about each of that person’s parents who falls within the description in paragraph (a) or (b) of that article; and
- (b) a statement to the effect that—
 - (i) the parties are in an existing civil partnership with each other; and
 - (ii) each of the parties knows of no reason why the civil partnership should not be converted into a marriage.

Armed forces change procedure

29.—(1) The parties to a civil partnership must, in order to change their civil partnership into a marriage in accordance with this Chapter—

- (a) attend in person before the authorised person;
- (b) provide evidence of the formation of their civil partnership with each other; and
- (c) provide such evidence as may be required by the authorised person to satisfy the authorised person of the details provided in the declaration.

(2) Once the parties to the civil partnership have signed the declaration referred to in article 28, the authorised person must, in the presence of the parties, also sign the declaration.

Duty to register civil partnerships changed into marriages

30.—(1) The authorised person must maintain a register and therein register every change of a civil partnership into a marriage signed by the authorised person in accordance with article 29(2) (armed forces change procedure).

(2) The authorised person must send to the Registrar General for England and Wales a copy of the declaration signed in accordance with article 29(2).

(3) On receipt of the declarations in accordance with paragraph (2), the Registrar General for England and Wales must send them to the Registrar General of Births, Deaths and Marriages for Scotland.

PART 6

Consequential modifications

31. Schedules 5 and 6 to this Order (which make consequential modifications to primary and secondary legislation respectively) have effect.

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.
This draft has been replaced by a new draft, The Marriage and Civil Partnership (Scotland) Act 2014 and Civil
Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 ISBN 978-0-11-112240-2

Dover House,
London
Date

Name
Parliamentary Under Secretary of State
Scotland Office

SCHEDULE 1

Article 4

MEANING OF MARRIAGE AND RELATED EXPRESSIONS: SCOTLAND

PART 1

Meaning of marriage and related expressions: Scotland

1.—(1) In the reserved law of Scotland, marriage has the same effect in relation to same sex couples as it has in relation to opposite sex couples.

(2) The reserved law of Scotland (including all Scottish legislation whenever passed or made) has effect in accordance with paragraph (1).

(3) For provision about limitations on the effect of paragraph 1(1) and (2) and paragraphs 2 to 4, see paragraph 5.

(4) In this Schedule, the “reserved law of Scotland” means the law of Scotland but not law that would, if contained in an Act of the Scottish Parliament, be within the legislative competence of that Parliament.

(5) In this Schedule, an expression set out in an entry in the first column of this table has the meaning given in the corresponding entry in the second column.

<i>Expression</i>	<i>Meaning</i>
primary legislation	an Act of Parliament
subordinate legislation	any Order in Council, order, rules, regulations, schemes, warrants, byelaws and other instruments made under primary legislation
Scottish legislation	primary legislation and subordinate legislation which forms part of the law of Scotland (whether or not it also forms part of the law of another jurisdiction) but not legislation that would, if contained in an Act of the Scottish Parliament, be within the legislative competence of that Parliament

PART 2

GENERAL INTERPRETATION

Interpretation: existing Scottish legislation

2.—(1) In existing Scottish 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;
- (c) 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.

(2) In existing Scottish legislation—

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.
This draft has been replaced by a new draft, *The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014* ISBN 978-0-11-112240-2

- (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;
 - (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.
- (3) Where sub-paragraph (1) or (2) 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.
- (4) For the purposes of sub-paragraphs (1) to (3) it does not matter how the reference is expressed.
- (5) Sub-paragraph (6) applies to existing Scottish 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.
- (6) 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.
- (7) This paragraph does not limit paragraph 1(1) or 1(2).

Interpretation: new Scottish legislation

- 3.—**(1) This paragraph applies to provision made by—
- (a) this order; or
 - (b) new Scottish 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; or
 - (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 paragraph does not limit paragraph 1(1) or (2).

Definitions

4.—(1) In this Schedule—

“existing Scottish legislation” means—

- (a) in the case of Scottish legislation that is primary legislation, legislation passed on or before the day on which section 4 of the 2014 Act comes into force;
- (b) in the case of Scottish legislation that is subordinate legislation, legislation that is made on or before that day;

“new Scottish legislation” means—

- (c) in the case of Scottish legislation that is primary legislation, legislation passed after the day on which section 4 of the Marriage and Civil Partnership (Scotland) Act 2014 comes into force;
- (d) in the case of Scottish legislation that is subordinate legislation, legislation that is made after that day.

SCHEDULE 2

Article 5(1)

CONTRARY PROVISION

PART 1

CONTRARY PROVISION (GENERAL)

Contrary provision: general

1. Paragraph 1(1) and (2) and paragraphs 2 to 4 of this Schedule are subject to any [contrary] provision made by—

- (a) the following provisions of this Schedule;
- (b) any new Scottish legislation,

including any such contrary provision contained in amendments of existing Scottish legislation.

Contrary provision: EU instruments

2. Paragraph 1(1) and (2) and paragraphs 2 to 4 of this Schedule do not apply to EU instruments.

Contrary provision: private Acts

3. Paragraph 1(1) and (2) and paragraphs 2 to 4 of this Schedule do not apply to a private Act made before the day on which section 4 of the 2014 Act comes into force which—

- (a) vests property;
- (b) provides for the use, disposal or devolution of property; or
- (c) establishes a body or regulates the purposes and administration of a body (whether the body is incorporated or not and whether it is a charitable body or not).

PART 2

DISAPPLICATION OF SCHEDULE 1 IN RESPECT OF ROYAL TITLES AND PEERAGES

Provision disapplying the effect of Schedule 1 etc. in respect of the common law

4.—(1) Paragraph 1(1) and (2) of Schedule 1 do not affect any rule of law concerning the right of a person—

- (a) who marries, or who is married to, the King Regnant, to the title of Queen; or
- (b) who marries, or who is married to, the Prince of Wales, to the title of Princess of Wales.

(2) Paragraph 1(1) and (2) of Schedule 1 does not affect any rule of law concerning the acquisition of a right to, or interest in, a peerage, and all titles, rights, offices, privileges and precedence attaching to it, by a person who marries or who is married to a peer holding that peerage.

PART 3

ENACTMENTS ETC. (GENERAL)

Provision to which Schedule 1 is subject

5.—(1) Paragraph 1(1) and (2) of Schedule 1 have effect subject to sub-paragraph (2) of this article.

(2) In applying rules E.3(6)(a), E.4(3)(a) and E.5(3)(a) in Part E of Schedule 1 to the Armed Forces Pension Scheme Order 2005⁽²⁰⁾ for the purposes of calculation death benefits payable under rules E1 and E2, a surviving spouse who was married to someone of the same sex is to be treated in the same way as the surviving civil partner of a civil partnership.

Provision disapplying the effect of Schedule 1 in respect of enactments

6. Paragraph 1(1) and (2) and paragraphs 2 to 4 of Schedule 1 do not apply to—

- (a) the Treason Act 1351⁽²¹⁾;
- (b) the Crown Private Estate Act 1800⁽²²⁾;
- (c) section 60 of the Government Annuities Act 1929⁽²³⁾;
- (d) the War Pensions (Coastguards) Scheme 1944⁽²⁴⁾;
- (e) the Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948⁽²⁵⁾;
- (f) the Airways Corporations (General Staff Pensions) Regulations 1948⁽²⁶⁾;
- (g) the Airways Corporations (Pilots Pensions) Regulations 1951⁽²⁷⁾;

⁽²⁰⁾ S.I. 2005/438; to which there are amendments not relevant to this Order.

⁽²¹⁾ 1351 c.2; the Act was extended to Scotland by the Treason Act 1708, and amended by the Forgery Act 1830 (c.66), section 31, 2 and 3 Will 4 (c.34), section 1, 9 Geo 4 (c.31), section 1, 10 Geo 4 (c.34), section 1, the Escheat (Procedure) Act 1887 (c.53), the Schedule, the Statute Law Revision Act 1948 (c.62), the Criminal Law Act 1967 (c.58), Schedule 3, Part 1, the Succession to the Crown Act 2013 (c.20), the Schedule (not yet in force).

⁽²²⁾ 1800 c.88.

⁽²³⁾ 1929 c.29.

⁽²⁴⁾ S.I. 1944/500; to which there are amendments not relevant to this Order.

⁽²⁵⁾ S.I. 1948/1411; to which there are amendments not relevant to this Order.

⁽²⁶⁾ S.I. 1948/2361; to which there are amendments not relevant to this Order.

⁽²⁷⁾ S.I. 1951/527.

- (h) the Airways Corporations (Radio, Navigating and Engineer Officers Pensions) Regulations 1953**(28)**;
- (i) the Airways Corporations (General Staff, Pilots and Officers Pensions) (Amendment) Regulations 1957**(29)**;
- (j) the British Transport Reorganisation (Pensions of Employees) (No. 2) Order 1962**(30)**;
- (k) the Air Corporations (General Staff, Pilots and Officers Pensions) (Amendment) (No. 2) Regulations 1963**(31)**;
- (l) the Air Corporations (General Staff, Pilots and Officers Pensions) (Amendment) Regulations 1967**(32)**;
- (m) the Harbour Reorganisation (Compensation to Employees) Regulations 1967**(33)**;
- (n) the British Transport (Compensation to Employees) Regulations 1970**(34)**;
- (o) sections 1, 3(7)(a) and 6 and the definition of widow's pension in section 17(1) of the Pensions (Increase) Act 1971**(35)**;
- (p) the Transport Holding Company (Compensation to Employees) Regulations 1972**(36)**;
- (q) section 59(5ZB)(a) and (b) and (5ZC)(a) of the Social Security Pensions Act 1975**(37)**;
- (r) the Vehicle and Driving Licences (Compensation to Officers) Regulations 1977**(38)**;
- (s) articles 2 and 3 of the Pensions Increase (Review) Order 1979**(39)**;
- (t) the National Freight Corporation (Central Trust) (Amendment) Order 1980**(40)**;
- (u) articles 2 and 3 of the Pensions Increase (Review) Order 1980**(41)**;
- (v) articles 2 and 3 of the Pensions Increase (Review) Order 1981**(42)**;
- (w) articles 2 and 3 of the Pensions Increase (Review) Order 1982**(43)**;
- (x) articles 2 and 3 of the Pensions Increase (Review) Order 1983**(44)**;
- (y) articles 2 and 3 of the Pensions Increase (Review) Order 1984**(45)**;
- (z) articles 2 and 3 of the Pensions Increase (Review) Order 1985**(46)**;
- (aa) articles 2 and 3 of the Pensions Increase (Review) Order 1986**(47)**;
- (bb) articles 2 and 3 of the Pensions Increase (Review) Order 1987**(48)**;

(28) S.I. 1953/1296.

(29) S.I. 1957/87; to which there are amendments not relevant to this Order.

(30) S.I. 1962/2715.

(31) S.I. 1963/1108.

(32) S.I. 1967/739.

(33) S.I. 1967/1889.

(34) S.I. 1970/187.

(35) 1971 c.56; section 1 was substituted by the Schedule to S.I. 1978/1211. Section 3(7) was amended by the Children Act 1975 (c.72), section 108(1)(b) and Schedule 4. There are other amendments to section 3 not relevant to this Order. Section 6 was amended by section 3(3) of the Pensions (Increase) Act 1974 (c.9). The definition of "widow's pension" in section 17(1) was inserted by section 3(3) of the Pensions (Increase) Act 1974 and was substituted by the Welfare Reform and Pensions Act 1999 (c.30), section 39(1) and (5)(c). There are other amendments to section 17 not relevant to this Order.

(36) S.I. 1972/632.

(37) 1975 c.60; subsections (5ZB) and (5ZC) were inserted by the Pensions Act 2008 (c.30), section 137(1) and (8).

(38) S.I. 1977/1316; to which there are amendments not relevant to this Order.

(39) S.I. 1979/1047.

(40) S.I. 1980/657.

(41) S.I. 1980/1302.

(42) S.I. 1981/1217.

(43) S.I. 1982/1178.

(44) S.I. 1983/1264.

(45) S.I. 1984/1307.

(46) S.I. 1985/1575.

(47) S.I. 1986/1116.

(48) S.I. 1987/130.

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, *The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014* ISBN 978-0-11-112240-2

- (cc) the Judicial Pensions (Widows' and Children's Benefits) Regulations 1987**(49)**;
- (dd) articles 2 and 3 of the Pensions Increase (Review) Order 1988**(50)**;
- (ee) articles 2 and 3 of the Pensions Increase (Review) Order 1989**(51)**;
- (ff) articles 2 and 3 of the Pensions Increase (Review) Order 1990**(52)**;
- (gg) the Judicial Pensions (Widowers' and Children's Benefits) Regulations 1991**(53)**;
- (hh) paragraphs 5(2)**(54)**, 5A**(55)** and 6**(56)** of Schedule 5 to the 1992 Act**(57)**;
- (ii) the Railways Pension Scheme Order 1994**(58)**;
- (jj) the Railway Pensions (Transfer and Miscellaneous Provisions) Order 1994**(59)**;
- (kk) the British Coal Staff Superannuation Scheme (Modification) Regulations 1994**(60)**;
- (ll) the Mineworkers' Pension Scheme (Modification) Regulations 1994**(61)**;
- (mm) the Industry-Wide Coal Staff Superannuation Scheme Regulations 1994**(62)**;
- (nn) the Industry-Wide Mineworkers' Pension Scheme Regulations 1994**(63)**;
- (oo) regulations 55(1) and 69B(3)(c) and (d) of the Occupational Pension Schemes (Contracting-out) Regulations 1996**(64)**;
- (pp) the Transport Act 2000 (Civil Aviation Authority Pension Scheme) Order 2001**(65)**;
- (qq) section 299 of the Pensions Act 2004**(66)** and the relevant provisions of the reciprocal agreement with Australia (within the meaning of that section) as continued in force by that section;
- (rr) regulations 3(i) and 7(1) of the Occupational Pension Schemes (Modification of Schemes) Regulations 2006**(67)**;
- (ss) Schedule 1, Part E, rule E.1, paragraphs (3)(c) and (5)(c) and rule E.6, paragraph (1)(d) and Schedule 2, Part C, rule C.2, paragraphs (a) and (b) and Part D, rule D.1(3) to the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010**(68)**;

(49) S.I. 1987/375; to which there are amendments not relevant to this Order.

(50) S.I. 1988/217.

(51) S.I. 1989/477.

(52) S.I. 1990/483.

(53) S.I. 1991/2731; to which there are amendments not relevant to this Order.

(54) Paragraph 5 was amended by S.I. 2005/2053. Paragraphs 5, 5A and 6 were substituted for paragraphs 5 and 6 as originally enacted by the Pensions Act 1995 (c.26), Schedule 4, paragraph 21(15). Paragraphs 5 to 6A of that Schedule were repealed by the Pensions Act 2011 (c.19), section 2(5). That repeal was brought into force in respect of certain specified provisions by S.I. 2011/3034 but has yet to be brought into force in respect of the remaining provisions.

(55) Paragraph 5A was amended by the Child Support, Pensions and Social Security Act 2000 (c.19), section 39 and the Pensions Act 2007 (c.22), Schedule 1, paragraph 20 and Schedule 7, Part 3.

(56) Paragraph 6 was amended by the Child Support, Pensions and Social Security Act 2000, section 39 and the Pensions Act 2007, Schedule 1, paragraph 20 and Schedule 7, Part 3.

(57) 1992 c.4; there are other amendments to Schedule 5 not relevant to this Order.

(58) S.I. 1994/1433; to which there are amendments not relevant to this Order.

(59) S.I. 1994/2005.

(60) S.I. 1994/2576; to which there are amendments not relevant to this Order.

(61) S.I. 1994/2577; to which there are amendments not relevant to this Order.

(62) S.I. 1994/2973; to which there are amendments not relevant to this Order.

(63) S.I. 1994/2974; to which there are amendments not relevant to this Order.

(64) S.I. 1996/1172; paragraph (1)(c) of regulation 55 was amended by S.I. 1997/786 and S.I. 2005/2050, and regulation 69B was inserted by S.I. 2009/846. There are other amendments to these Regulations not relevant to this Order.

(65) S.I. 2001/853; to which there are amendments not relevant to this Order.

(66) 2004 c.35.

(67) S.I. 2006/759; to which there are amendments not relevant to this Order.

(68) Order in Council made pursuant to section 3 of the *Naval and Marine Pay and Pensions Act 1865* (28 and 29 Vict c. 73). This Order in Council and its amending orders are not statutory instruments. Schedule 1 was substituted in its entirety by the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2010 and subsequently amended by the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme (Amendment) Order 2012. These latter Orders can be found at www.gov.uk/government/publications/armed-forces-

- (tt) Schedule 1, Part E, rule E.1, paragraphs (3)(c) and (5)(c) and rule E.6, paragraph (1)(d) and Schedule 2, Part C, rule C.2, paragraphs (a) and (b) and Part D, rule D.1(3) to the Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Warrant 2010(69);
- (uu) Schedule 1, Part E, rule E.1, paragraphs (3)(c) and (5)(c) and rule E.6, paragraph (1)(d) and Schedule 2, Part C, rule C.2, paragraphs (a) and (b) and Part D, rule D.1(3) to the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010(70);
- (vv) Schedule 1, Part D, rule D.3, paragraph (4) and Schedule 2, Part C, rule C.2, paragraphs (4)(d) and (5)(d) to the Reserve Forces Non Regular Payment Permanent Staff (Pensions and Attributable Benefits Schemes) Regulations 2011(71);
- (ww) the Royal Mail Statutory Pension Scheme(72).

SCHEDULE 3

Article 5(2)

CONSEQUENTIAL MODIFICATIONS TO ENACTMENTS ETC. AS A RESULT OF CONTRARY PROVISION MADE BY SCHEDULE 2

ENACTMENTS ETC. (GENERAL)

Pensions (Increase) Act 1971

- 1.—(1) The Pensions (Increase) Act 1971(73) is amended as follows.
- (2) In section 3(7) (qualifying conditions), in paragraph (a), for “husband’s” substitute “male spouse’s”.
- (3) In section 17(1) (interpretation), in the definition of “widow’s pension”—
 - (a) in the opening words after “payable” insert “to a woman”; and
 - (b) for “husband” in both places it occurs, substitute “male spouse”.

Pensions Increase (Review) Orders 1979 to 1990

2. In article 2 (interpretation) of each of—

[pension-scheme-1975-regulations](#). Hard copies are available from CDP- Remuneration, Armed Forces Pensions, Level 6 Zone M, Ministry of Defence, Main Building, London SW1A 2HB.

- (69) Royal Warrant made under section 2 of the [Pensions and Yeomanry Pay Act 1884 \(47 and 48 Vict c. 55\)](#) and prerogative powers. This Warrant and the warrants which amend it are not statutory instruments. Schedule 1 was substituted in its entirety by the Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Warrant 2010 and was subsequently amended by the Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Warrant 2012. These latter Warrants can be found at www.gov.uk/government/publications/armed-forces-pension-scheme-1975-regulations. Hard copies are available from CDP- Remuneration, Armed Forces Pensions, Level 6 Zone M, Ministry of Defence, Main Building, London SW1A 2HB
- (70) Queen’s Order made under section 2(1) of the [Air Force \(Constitution\) Act 1917 \(7 and 8 Geo 5 c. 51\)](#). This Order and its amending orders are not statutory instruments. Schedule 1 was substituted by the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2010 and subsequently amended by the Air Force Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2012. These latter Orders can be found at www.gov.uk/government/publications/armed-forces-pension-scheme-1975-regulations. Hard copies are available from CDP- Remuneration, Armed Forces Pensions, Level 6 Zone M, Ministry of Defence, Main Building, London SW1A 2HB.
- (71) These Regulations are not statutory instruments. Copies can be found at <http://www.gov.uk/government/publications/reserve-forces-pension-scheme-regulations>. Hard copies can be obtained from CDP-Remuneration, Armed Forces Pensions, Level 6 Zone M, Ministry of Defence, Main Building, London SW1A 2HB.
- (72) The Scheme Rules are in Schedule 1 to [S.I. 2012/687](#).
- (73) [1971 c.56](#). Sections 3(7) and 17(1) were amended by [S.I. 2014/560](#).

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- (a) the Pensions Increase (Review) Order 1979;
- (b) the Pensions Increase (Review) Order 1980;
- (c) the Pensions Increase (Review) Order 1981;
- (d) the Pensions Increase (Review) Order 1982;
- (e) the Pensions Increase (Review) Order 1983;
- (f) the Pensions Increase (Review) Order 1984;
- (g) the Pensions Increase (Review) Order 1985;
- (h) the Pensions Increase (Review) Order 1986;
- (i) the Pensions Increase (Review) Order 1987;
- (j) the Pensions Increase (Review) Order 1988;
- (k) the Pensions Increase (Review) Order 1989; and
- (l) the Pensions Increase (Review) Order 1990,

in the definition of “widow’s pension”, for “in respect” to the end substitute “to a woman in respect of the services of her deceased male spouse.”(74).

Occupational Pension Schemes (Contracting-out) Regulations 1996

3.—(1) The Occupational Pension Schemes (Contracting-out) Regulations 1996(75) are amended as follows.

(2) In regulation 55(1) (scheme rules about guaranteed minimum pensions)—

- (a) in sub-paragraph (b), for the words from “widow” to “appointed day” substitute “widow of the earner under the scheme in respect of the earner’s service before the principal appointed day, in a case where the earner is a man,”; and
- (b) in sub-paragraph (c), for the words from “widower” to “appointed day” substitute “widower or surviving civil partner of the earner under the scheme in respect of the earner’s service before the principal appointed day, or to any widow of the earner under the scheme in respect of that service in a case where the earner is a woman,”.

(3) In regulation 69B(3) (conversion of guaranteed minimum pensions into other benefits: survivors’ benefits)—

- (a) in sub-paragraph (c), for “widows” substitute “widows whose spouse was a man”; and
- (b) in sub-paragraph (d), for “widowers” substitute “widowers, widows whose spouse was a woman”.

Occupational Pension Schemes (Modification of Schemes) Regulations 2006

4.—(1) The Occupational Pension Schemes (Modification of Schemes) Regulations 2006(76) are amended as follows.

(2) In regulation 3(i) (non-application of the subsisting rights provisions), for “widow or widower”, in both places it occurs, substitute “woman whose deceased spouse was a man, or a man whose deceased spouse was a woman”.

(74) The orders listed in paragraph 2 of this Schedule are cited at paragraph 3 of Schedule 2 to this Order. Article 2 of each of the Orders was amended by [S.I. 2014/560](#).

(75) [S.I. 1996/1172](#); paragraph (1)(c) of regulation 55 was amended by [S.I. 1997/786](#) and [S.I. 2005/2050](#), and regulation 69B was inserted by [S.I. 2009/846](#). There are other amendments to these Regulations not relevant to this Order.

(76) [S.I. 2006/759](#); to which there are amendments not relevant to this Order.

(3) In regulation 7(1) (modification of schemes: surviving civil partners), for “widow or widower”, in both places it occurs, substitute “woman whose deceased spouse was a man, or a man whose deceased spouse was a woman”.

SCHEDULE 4

Article 5(3)

CONSEQUENTIAL MODIFICATION OF THE SOCIAL SECURITY PENSIONS ACT 1975 AND THE SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

Social Security Pensions Act 1975

1.—(1) Section 59 of the Social Security Pensions Act 1975(**77**) (increase of official pensions) is amended as follows.

(2) In subsection (5ZA)(**78**)—

- (a) in the opening words, for the words “widow’s, widower’s” substitute “surviving spouse’s”; and
- (b) in paragraph (c), for the words “widow’s, widower’s” substitute “surviving spouse’s”.

(3) In subsection (5ZB)(**79**)—

(a) for paragraph (a) substitute—

- “(a) in the case of a pension payable to a woman in respect of the services—
 - (i) of her deceased male spouse; or
 - (ii) of her deceased female spouse in a relevant gender change case;

one half of the rate of the deceased spouse’s guaranteed minimum pension at the relevant time;”

(b) in paragraph (b)—

- (i) for “a widower’s” substitute “any other surviving spouse’s”; and
- (ii) for “wife’s” substitute “spouse’s”.

(4) In subsection (5ZC)(**80**)—

(a) for paragraph (a) substitute—

- “(a) does not apply to—
 - (i) a pension payable to a woman in respect of the services of her deceased male spouse;
 - (ii) a pension payable to a man in respect of the services of his deceased female spouse;
 - (iii) a pension payable to a woman in respect of the services of her deceased female spouse in a relevant gender change case; or

(77) 1975 c.60.

(78) Subsection (5ZA) was inserted by the Pensions (Miscellaneous Provisions) Act 1990 (c.7), section 5(1), it was subsequently amended by the Pensions Act 2008 (c.30), section 137(1) to (7) and Schedule 11, Part 6 and in relation to England and Wales, S.I. 2014/560.

(79) Subsection (5ZB) was inserted by the Pensions Act 2008 (c.30), section 137(1) and (8), and, in relation to England and Wales, amended by S.I. 2014/560.

(80) Subsection (5ZC) was inserted by the Pensions Act 2008, section 137(1) and (8), and in relation to England and Wales, amended by S.I. 2014/560.

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, *The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014* ISBN 978-0-11-112240-2

- (iv) a pension payable to a man in respect of the services of his deceased male spouse in a relevant gender change case,
 - in respect of any service of the deceased spouse if that deceased spouse's pension in respect of that service became payable before 24th July 1990," and
 - (b) in paragraph (b), before "surviving civil partner's" insert "pension due to a surviving spouse who was married to someone of the same sex (other than a pension within paragraph (a)(iii) or (iv)) and a".
- (5) In subsection (7)(**81**)—
- (a) after the definition of "lump sum" insert—
 - ““relevant gender change case” means a case where—
 - (a) the deceased spouse was a man or a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
 - (b) the marriage of the deceased spouse and the surviving spouse (that ends with the deceased spouse's death) subsisted before the time when the certificate was issued,”; and
 - (b) omit the definition of "widower's pension".

Social Security Contributions and Benefits Act 1992

- 2.—(1) The 1992 Act(**82**) is amended as follows.
- (2) For section 36(2)(**83**) (bereavement payment) substitute—
- “(2) A bereavement payment shall not be payable to a person if that person and a person whom that person was not married to, or in a civil partnership with, were living together as a married couple at the time of the spouse's or civil partner's death.”.
- (3) In section 37(4)(**84**) (widowed mother's allowance)—
- (a) after paragraph (a) insert "or"; and
 - (b) for paragraphs (b) and (c) substitute—
 - “(b) for any period during which she and a person whom she is not married to, or in a civil partnership with, are living together as a married couple.”.
- (4) In section 38(3)(**85**) (widow's pension)—
- (a) after paragraph (b) insert "or"; and
 - (b) for paragraphs (c) and (d) substitute—
 - “(c) for any period during which she and a person whom she is not married to, or in a civil partnership with, are living together as a married couple.”.
- (5) In section 39A(5)(**86**) (widowed parent's allowance)—

(81) Subsection (7) was amended by the Social Security Act 1979 (c.18), Schedule 3, paragraph 20, the Pension Schemes Act 1993 (c.48), Schedule 8, paragraph 9(1)(b) and the Pensions Miscellaneous Provisions Act 1990 (c.7), section 5(2) and by S.I. 2014/560.

(82) 1992 c.4.

(83) Section 36 was substituted by the Welfare Reform and Pensions Act 1999 (c.30), section 54(1); subsection (2) was substituted by the Civil Partnership Act 2004, Schedule 24, paragraph 16(1) and (3), and substituted by S.I. 2014/560.

(84) Section 37(4) was amended by the Civil Partnership Act 2004, Schedule 24, paragraph 18(1) and (3) and Schedule 30; and amended by S.I. 2014/560.

(85) Section 38(3) was amended by the Civil Partnership Act 2004, Schedule 24, paragraph 19(1) and (3) and Schedule 30; and amended by S.I. 2014/560.

(86) Section 39A was inserted by the Welfare Reform and Pensions Act 1999, section 55(2); subsection (5) was amended by the Civil Partnership Act 2004, Schedule 24, paragraph 20(1) to (3) and (7) and Schedule 30; and amended by S.I. 2014/560.

- (a) after paragraph (a) insert “or”; and
- (b) for paragraphs (b) and (c) substitute—
 - “(b) for any period during which the surviving spouse or civil partner and a person whom she or he is not married to, or in a civil partnership with, are living together as a married couple.”.
- (6) In section 39B(5)(**87**) (bereavement allowance where no dependent children)—
 - (a) after paragraph (a) insert “or”; and
 - (b) for paragraphs (b) and (c) substitute—
 - “(b) for any period during which the surviving spouse or civil partner and a person whom she or he is not married to, or in a civil partnership with, are living together as a married couple.”.
- (7) In section 48 (Use of former spouse’s contributions), after subsection (4) insert—
 - “(5) For the purposes of this section, a civil partnership is not to be treated as having terminated by reason of its having been—
 - (a) converted into a marriage under section 9 of the Marriage (Same Sex Couples) Act 2013;
 - (b) changed into a marriage under the Marriage (Scotland) Act 1977;
 - (c) changed into a marriage in accordance with provision made under section 10 of the Marriage and Civil Partnership (Scotland) Act 2014; or
 - (d) changed into a marriage under Part 5 of the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014.”.
- (8) In section 48A (Category B retirement pension for married person)(**88**)—
 - (a) in subsection (2ZA)—
 - (i) in paragraph (a), for “married man who” substitute “man married to a woman and the spouse”;
 - (ii) after paragraph (b) insert—
 - “(c) in a case where the spouse is a woman born before 6th April 1945 who is married to a woman and subsection (2ZB) applies, the conditions specified in Schedule 3, Part 1, paragraph 5;
 - (d) in a case where the spouse is a woman born on or after 6th April 1945 but before 6th April 1950 who is married to a woman and subsection (2ZB) applies, the condition specified in Schedule 3, Part 1, paragraph 5A.”;
 - (b) after subsection (2ZA) insert—
 - “(2ZB) This subsection applies where—
 - (a) the spouse is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
 - (b) the marriage subsisted before the time when that certificate was issued.”.

(87) Section 39B was inserted by the Welfare Reform and Pensions Act 1999, section 55(2); subsection (5) was amended by the Civil Partnership Act 2004, Schedule 24, paragraph 21(1), (2) and (6) and Schedule 30 and by [S.I. 2014/560](#).

(88) Section 48A was, in relation to England and Wales, amended by the 2013 Act, Schedule 4, paragraph 11. Section 48A is prospectively amended by paragraph 60 of the Pensions Act 2014 ([c.19](#)).

- (9) In section 48B(1ZA) (category B retirement pension for widows and widowers)⁽⁸⁹⁾—
- (a) in paragraph (a)(ii), after “date” in the second place where it occurs insert “and the case does not fall within paragraph (c)”;
 - (b) after paragraph (b) insert—
 - “(c) in a case where—
 - (i) the spouse died on or after 6th April 2010;
 - (ii) the spouse was born on or after 6th April 1945 but before 6th April 1950;
 - (iii) the spouse was, at the time of her death, a woman and the pensioner in question is a woman; and
 - (iv) subsection (1ZB) applies,the condition specified in Schedule 3, Part 1, paragraph 5A.”; and
 - (c) after subsection (1ZA) insert—
 - “(1ZB) This subsection applies where—
 - (a) the spouse was, at the time of her death, a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
 - (b) the marriage subsisted before the time when that certificate was issued.”.
- (10) In section 51⁽⁹⁰⁾(category B retirement pension for widowers)—
- (a) after subsection (1) insert—
 - “(1ZA) A party to a marriage of a same sex couple shall be entitled to a Category B retirement pension if—
 - (a) the other party has died and they were married to each other at the time of that death;
 - (b) they were both over pensionable age at the time of that death; and
 - (c) before that death the deceased party satisfied the contribution conditions for a Category A retirement pension in Schedule 3, Part 1, paragraph 5.”; and
 - (b) in subsection (2), after “wife” insert “, husband”; and
 - (c) in subsection (3), after “2002” insert “, surviving party to a same sex marriage.”.
- (11) In section 62⁽⁹¹⁾(graduated retirement benefit)—
- (a) in subsection (1), after paragraph (ac) insert—
 - “(ad) for extending section 37 of that Act (increase of woman’s retirement pension by reference to her late husband’s graduated retirement benefit) to—
 - (i) men and their late husbands; and
 - (ii) women and their late wives,and for that section (except subsection (5)) so to apply as it applies to women and their late husbands;
 - (ae) for extending section 37 of that Act (increase of woman’s retirement pension by reference to her late husband’s graduated retirement benefit) to—
 - (i) men and their late husbands; and

⁽⁸⁹⁾ Section 48B(1ZA) was inserted by the Pensions Act 2007 Schedule 1, paragraph 3(3), and, in relation to England and Wales was amended by the 2013 Act, Schedule 4, paragraph 12. Section 48B is prospectively amended by paragraph 61 of the Pensions Act 2014 (c.19).

⁽⁹⁰⁾ Section 51 was amended in relation to England and Wales by the 2013 Act, Schedule 4, paragraph 13.

⁽⁹¹⁾ Section 62 was amended by the 2013 Act, Schedule 4, paragraph 14.

- (ii) women and their late wives,
who attained pensionable age before 6th April 2010 and for that section (except subsection (5)) so to apply as it applies to men and their late wives;”;
- (b) after subsection (2) insert—
- “(3) In relevant gender change cases, women and their late wives are to be treated for the purposes of sections 36 and 37 of the National Insurance Act 1965 in the same way as women and their late husbands.
- (4) For that purpose “relevant gender change case”, in relation to a woman (“the pensioner”) and her late wife, means a case where—
- (a) the late wife was, at the time of her death, a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
- (b) the marriage of the pensioner and her late wife subsisted before the time when the certificate was issued.”.
- (12) In section 122(92) (interpretation of Parts 1 to 6 and supplementary provisions), omit subsection (1A).
- (13) In section 137(93) (interpretation of Part 7 and supplementary provisions)—
- (a) in subsection (1), for the definition of “couple” substitute—
- ““couple” means—
- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple otherwise than in prescribed circumstances;”;
- (b) omit subsection (1A).
- (14) In paragraph 5A of Schedule 3(94)—
- (a) at the end of sub-paragraph (1)(b) insert “or in a case of the kind mentioned in subsection (2ZA)(d) of that section”; and
- (b) at the end of sub-paragraph (1)(c) insert “or in a case of the kind mentioned in subsection (1ZA)(c) of that section”.
- (15) In paragraph 5(2) of Schedule 5 (pension increase or lump sum where entitlement to retirement pension is deferred)(95)—
- (a) for paragraph (a), substitute—
- “(a) where W is a woman—
- (i) whose deceased spouse was a man; or
- (ii) who falls within paragraph 7(3) below,

(92) Section 122(1A) was inserted by the Civil Partnership Act 2004, Schedule 24, paragraph 41(1) and (3) and amended by [S.I. 2014/560](#) in relation to England and Wales.

(93) The definition of “couple” in section 137(1) and (1A) were inserted by the Civil Partnership Act 2004, Schedule 24, paragraph 46(1), (3) and (5) and was amended by [S.I. 2014/560](#). Section 137 has been repealed by the Welfare Reform Act 2012 (c.5) for certain purposes. That repeal is not fully in force.

(94) Paragraph 5A of Schedule 3 was amended by the 2013 Act, Schedule 4, paragraphs 11 and 12.

(95) Paragraph 5 was amended by [S.I. 2005/2053](#) and in relation to England and Wales [S.I. 2014/560](#). Paragraphs 5, 5A and 6 were substituted for paragraphs 5 and 6 as originally enacted by the Pensions Act 1995 (c.26), Schedule 4, paragraph 21(15). Paragraphs 5 to 6A of Schedule 5 to the 1992 Act were repealed by the Pensions Act 2011 (c.19), section 2(5). That repeal was brought into force in respect of certain specified provisions by [S.I. 2011/3034](#) but has yet to be brought into force in respect of the remaining provisions.

- an amount equal to the sum of the amounts set out in paragraph 5A(2) or (3) below (as the case may be);”;
- (b) in paragraph (b), for “widower” substitute “man whose deceased spouse was a woman”;
- and
- (c) for paragraph (c), substitute—
- “(c) where W is—
- (i) a woman who does not fall within paragraph 7(3) below and whose deceased spouse was a woman;
- (ii) a man whose deceased spouse was a man; or
- (iii) a surviving civil partner,
- an amount equal to the sum of the amounts set out in paragraph (6A)(2) below.”.
- (16) In paragraph 5A(96)—
- (a) for sub-paragraph (1) substitute—
- “(1) This paragraph applies where W (referred to in paragraph 5 above) is a woman—
- (a) whose deceased spouse was a man; or
- (b) who falls within paragraph 7(3) below.”; and
- (b) in sub-paragraphs (2) and (3), for “husband” in each place it appears substitute “spouse”.
- (17) In paragraph 6(1)(97), for “widower” substitute “man whose deceased spouse was a woman”.
- (18) In paragraph 6A(98)—
- (a) For sub-paragraph (1) substitute—
- “(1) This paragraph applies where W (referred to in paragraph 5 above) is—
- (a) a woman who does not fall within paragraph 7(3) below and whose deceased spouse was a woman;
- (b) a man whose deceased spouse was a man; or
- (c) a surviving civil partner.”; and
- (b) in sub-paragraph (2)(c), before “civil partner” insert “spouse or”.
- (19) In paragraph 7(99), after sub-paragraph (2) insert—
- “(3) For the purposes of paragraphs 5, 5A and 6A above, a woman falls within this sub-paragraph if—
- (a) she was married to another woman who, at the time of her death, was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
- (b) that marriage subsisted before the time when that certificate was issued.”.

(96) Paragraph 5A was amended by the Child Support, Pensions and Social Security Act 2000 (c. 19), section 39 and the Pensions Act 2007 (c.22), Schedule 1, paragraph 20 and Schedule 7, Part 3 and in relation to England and Wales, S.I. 2014/560.

(97) Paragraph 6 was amended by the Child Support, Pensions and Social Security Act 2000 (c.19), section 39 and the Pensions Act 2007 (c.22), Schedule 1, paragraph 20 and Schedule 7, Part 3.

(98) Paragraph 6A was inserted by S.I. 2005/2053 and was amended by the Pensions Act 2007, Schedule 1, paragraph 20 and Schedule 7, Part 3 and in relation to England and Wales, S.I. 2014/560.

(99) Paragraph 7 was amended by the Social Security (Incapacity for Work) Act 1994 (c.18) and S.I. 2005/2053. It was repealed by the Pensions Act 2011, section 2(5), subject to savings made by section 2(7), but that repeal is not yet fully in force.

- (20) In Schedule 7(**100**) (industrial injuries benefits)—
- (a) in paragraph 4(3)(a) (increase for beneficiary’s dependent children and qualifying young persons)—
- (i) after sub-paragraph (i) insert “or”; and
- (ii) for sub-paragraphs (ii) and (iii) substitute—
- “(ii) two people who are not married to, or civil partners of, each other but are living together as a married couple, and”, and;
- (b) in paragraph 15(3) (widow’s benefit (entitlement)), for the words from “husband and wife” to the end substitute “a married couple with a person whom she is not married to or in a civil partnership with.”.

SCHEDULE 5

Article 31

CONSEQUENTIAL MODIFICATIONS TO PRIMARY LEGISLATION

Pensions Commutation Act 1871

1. In section 4 of the Pensions Commutation Act 1871(**101**) (power to Treasury to commute pensions), for subsection (2) substitute—

“(2) Where any officer in the naval or land forces of Her Majesty whose pension has been commuted under this Act subsequently marries or forms a civil partnership, the officer’s surviving spouse or surviving civil partner shall not be entitled to any pension, and a child of any such officer born after the date of the commutation of the pension shall not be entitled to compassionate allowance.”.

Local Government (Emergency Provisions) Act 1916

2. For section 2 of the Local Government (Emergency Provisions) Act 1916(**102**) (payments under superannuation schemes) substitute—

“If an officer or servant of a local authority dies whilst serving in or with His Majesty’s forces, or in consequence of wounds or disease received or contracted during such service which prevented that person from returning to the service of the local authority, the local authority shall have, and shall be deemed always to have had, power to make to that person’s surviving spouse, surviving civil partner or other dependants, such payments as could have been made to them under any superannuation scheme (whether established by statute or otherwise) in force in the district had that person been actually serving the local authority at the time of death.”.

Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951

3. In the closing words of section 46(3) of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(**103**) (payments to make up civil remuneration), for “his widow” substitute “that person’s surviving spouse, surviving civil partner”.

(**100**) Paragraph 4(3)(a) of Schedule 7 was substituted by the Civil Partnership Act 2004, Schedule 24, paragraph 52(1) and (2) and amended by S.I. 2014/560. Paragraph 15(3) of Schedule 7 was amended by the Civil Partnership Act 2004, Schedule 24, paragraph 52(5)(b), and, in relation to England and Wales, was substituted by S.I. 2014/560, Schedule 1 paragraph 22(9)(b).

(**101**) 1871 c.36; section 4 was, in relation to England and Wales, amended by S.I. 2014/560.

(**102**) 1916 c.12; section 2 was, in relation to England and Wales, amended by S.I. 2014/560.

(**103**) 1951 c.65; relevant amendments are as follows: paragraph (a)(i) and (ii) of section 46(3) was substituted by the Superannuation Act 1972 (c.11), Schedule 6, paragraph 30; paragraph (a)(iii) was amended by the Fire and Rescue Services Act 2004 (c.21),

Transport Act 1962

4. In section 65(5) of the Transport Act 1962(**104**) (railway savings banks), for the words “is a man” to the end substitute “is a person who dies leaving a surviving spouse or surviving civil partner, that survivor for so long as that survivor does not subsequently marry, enter into a civil partnership or die.”.

National Insurance Act 1965

5.—(1) In section 37(1) of the National Insurance Act 1965(**105**) (special provisions as to graduated retirement benefit for widows, widowers and surviving civil partners), as that section has effect in relation to a survivor who attained pensionable age on or after 6th April 2010(**106**), after “widower”, in each place it occurs, insert “, surviving same sex spouse”.

(2) In section 37(1) of that Act, as that section has effect in relation to a survivor who attained pensionable age before 6th April 2010, after paragraph (c) insert—

“or

- (d) where a man, having paid graduated contributions as an insured person, dies leaving a widower, and they have both attained pensionable age at the time of his death; or
- (e) where a woman, having paid graduated contributions as an insured person, dies leaving a widow, and they both attained pensionable age at the time of her death,”.

Transport Act 1978

6. In section 21 of the Transport Act 1978(**107**) (travel concessions for transferred employees), for “widows” substitute “surviving spouses, surviving civil partners”.

Pneumoconiosis etc. (Workers’ Compensation) Act 1979

7. In section 3 of the Pneumoconiosis etc. (Workers’ Compensation) Act 1979(**108**) (dependants)

(a) for subsection (2A) substitute—

“(2A) For the purposes of subsection (1)(c) two persons are in a qualifying relationship if they are living together as a married couple.”; and

(b) omit subsection (2B).

Child Support Act 1991

8.—(1) The Child Support Act 1991(**109**) is amended as follows.

Schedule 1, paragraph 12(1) and (2); paragraph (a) was amended, and paragraph (b) inserted, by the 2004 Act, Schedule 26, paragraph 25(1) and (3). Section 46(3) was amended by [S.I. 2014/560](#).

(**104**) [1962 c.46](#); section 65(5) was amended by [S.I. 2014/560](#). There are other amendments to section 65 not relevant to this Order.

(**105**) c.51. Sections 36 and 37 of the National Insurance Act 1965 were repealed by the Social Security Act 1973 ([c.38](#)) with effect from 6th April 1975 but continue in force by virtue of regulations made under Schedule 3 to the Social Security (Consequential Provisions) Act 1992 ([c.6](#)). The relevant regulations are the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978 ([S.I. 1978/393](#)), as amended by [S.I. 1989/1642](#), [S.I. 1995/2606](#), [S.I. 1996/1345](#), [S.I. 1997/1642](#), [S.I. 1999/2422](#), [S.I. 2005/454](#), [S.I. 2009/497](#) and [S.I. 2009/2206](#).

(**106**) Section 37(1) was most recently amended by regulation 4(1) to (3) of the Social Security (State Pension and National Insurance Credits) Regulations 2009 ([S.I. 2009/2206](#)) but regulation 4(4) of those Regulations provides that the amendment made by regulation 4(2) of those Regulations does not apply where the survivor attained pensionable age before 6th April 2010.

(**107**) [1978 c.55](#); section 21 was amended by the London Regional Transport Act 1984 ([c.32](#)), Schedule 6, paragraph 14; the Transport Act 2000 ([c. 38](#)), Schedule 31, Part 4 (not yet in force); and by [S.I. 2014/560](#).

(**108**) [1979 c.41](#); subsections (2A) and (2B) of section 3 were inserted by the Welfare Reform Act 2007 ([c.5](#)), section 59(2). Subsection (2A) was substituted, and subsection (2B) was omitted, by [S.I. 2014/560](#).

(**109**) [1991 c.48](#).

(2) In Schedule 1(**110**) (maintenance assessments), as that Schedule has effect otherwise than by virtue of section 1(3) of, and Schedule 1 to, the Child Support, Pensions and Social Security Act 2000(**111**), in Part 1 (calculation of child support maintenance), in paragraph 6 (protected income)—

(a) in sub-paragraph (5)(b)(**112**), for sub-paragraphs (i) to (iii) substitute—

“(i) is living together in the same household with another adult who is his or her spouse or civil partner; or

(ii) is living together in the same household with another adult as if they were a married couple.”, and

(b) omit sub-paragraph (5A)(**113**).

(3) In Schedule 1 (maintenance calculations), as that Schedule has effect by virtue of section 1(3) of, and Schedule 1 to, the Child Support, Pensions and Social Security Act 2000, in Part 1 (calculation of weekly amount of child support maintenance), in paragraph 10C (references to various terms)—

(a) for sub-paragraph (5)(**114**) substitute—

“(5) In sub-paragraph (4)(a), “couple” means—

(a) two people who are married to, or civil partners of, each other and are members of the same household; or

(b) two people who are not married to, or civil partners of, each other but are living together as a married couple.”, and

(b) omit sub-paragraph (6).

Social Security Administration Act 1992

9. In section 15A of the Social Security Administration Act 1992(**115**) (payment out of benefit of sums in respect of mortgage interest etc.)—

(a) in subsection (4), in paragraph (b) of the definition of “partner”, for “husband and wife or as if they were civil partners” substitute “if they were a married couple”; and

(b) omit subsection (4B).

Trade Union and Labour Relations (Consolidation) Act 1992

10. In section 38(1) of the Trade Union and Labour Relations (Consolidation) Act 1992(**116**) (members’ superannuation schemes: separate fund to be maintained), in paragraph (a), after “widows” insert “, widowers’, surviving civil partners”.

Pension Schemes Act 1993

11.—(1) The Pension Schemes Act 1993(**117**) is amended as follows.

(**110**) Schedule 1 was substituted by section 1(3) of, and Schedule 1 to, the Child Support, Pensions and Social Security Act 2000 (c.19) only for specified purposes by S.I. 2000/2994 and 2003/192 and amended by S.I. 2014/560.

(**111**) 2000 c.19.

(**112**) Sub-paragraph (5)(b) was substituted by the 2004 Act, Schedule 24, paragraph 4 and amended by S.I. 2014/560.

(**113**) Paragraph 6(5A) of Schedule 1 was inserted by the Civil Partnership Act 2004, Schedule 24, paragraph 5.

(**114**) Sub-paragraphs (5) and (6) of paragraph 10C were substituted by the 2004 Act, Schedule 24, paragraph 6 and amended by S.I. 2014/560.

(**115**) 1992 c.5; section 15A was inserted by the Social Security (Mortgage Interest Payments) Act 1992 (c.33), the Schedule, paragraph 1 and was, in relation to England and Wales, amended by S.I. 2014/560. Subsection 4B was inserted by the Civil Partnership Act 2004, Schedule 24, paragraph 57(3). There are other amendments to subsection 4 not relevant to this Order.

(**116**) 1992 c.52; section 38(1) was amended by S.I. 2014/560.

(**117**) 1993 c.48; sections 8, 17, 24D, 37, 47, 83 and Schedule 3 were amended, and section 38A inserted by the 2013 Act, Schedule 4, paragraphs 18 to 26. Section 17 was further amended by S.I. 2014/560.

- (2) In section 8(2) (meaning of certain terms), in the definition of “guaranteed minimum pension”, after “widower’s” insert “, surviving same sex spouse’s”.
- (3) In section 17 (minimum pensions for widows and widowers)(**118**)—
- (a) in subsection (2)—
- (i) in paragraph (a), after “man” insert “, or a woman in a relevant gender change case,”; and
- (ii) after paragraph (c) insert—
- “(d) if the earner is a man who has a guaranteed minimum under that section, the weekly rate of the widower’s pension will not be less than the surviving same sex spouse’s guaranteed minimum;
- (e) if the earner is a woman (other than in a relevant gender change case) who has a guaranteed minimum under that section, the weekly rate of the widow’s pension will not be less than the surviving same sex spouse’s guaranteed minimum.”;
- (b) in subsection (4), after “partner’s” insert “or surviving same sex spouse’s;
- (c) in subsection (4A)(c)(i)(**119**), for paragraphs (a) and (b) (but not the “nor” following paragraph (b)) substitute “another person are living together as a married couple,”;
- (d) in subsection (5), at the beginning insert “In the case of a woman who is the widow of a man,”;
- (e) in subsection (6)—
- (i) at the beginning insert “In any other case,”; and
- after “widower’s” insert “, widow’s”;
- (f) for subsection (9) substitute—
- “(9) In relation to an earner who is a woman, a reference in this section to a relevant gender change case is a reference to a case where—
- (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
- (b) the marriage of the earner and her widow (that ends with the earner’s death) subsisted before the time when the certificate was issued.”.
- (4) In section 24D (survivors’ benefits)(**120**)—
- (a) in subsection (2), after “earner” insert “is a man married to a woman or a woman married to a woman in a relevant gender change case, and the earner”;
- (b) in subsection (3)—
- (i) after “earner” insert “is a married woman (other than in a relevant gender change case), a man married to a man, or a civil partner, and the earner”; and
- (ii) after “widower” insert “, widow”; and
- (c) after subsection (3) insert—
- “(4) In relation to an earner who is a woman, a reference in this section to a relevant gender change case is a reference to a case where—

(**118**) Section 17(2) was amended for England and Wales by the 2013 Act, Schedule 4, paragraphs 18 and 20 and by [S.I. 2014/560](#).

(**119**) Subsection (4A) was inserted by the Child Support, Pensions and Social Security Act 2000, Schedule 5, Part 1, paragraph 1(1) and amended by [S.I. 2005/2050](#).

(**120**) Section 24D was inserted by the Pensions Act 2007 ([c.22](#)), section 14(3). Section 24D was amended in relation to England and Wales by the 2013 Act, Schedule 4, paragraph 21(2)-(4).

- (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
 - (b) the marriage of the earner and her widow (that ends with the earner's death) subsisted before the time when the certificate was issued.”.
- (5) In section 37 (alteration of rules of contracted-out schemes)(**121**) for subsection (4) substitute—
- “(4) The reference in subsection (3) to a person entitled to receive benefits under a scheme includes a person who is so entitled by virtue of a qualifying relationship only in such cases as may be prescribed.
- (5) For that purpose a person is entitled to receive benefits by virtue of a qualifying relationship if the person is so entitled by virtue of being—
- (a) the widower of a female earner;
 - (b) the widower of a male earner;
 - (c) the widow of a female earner, except where it is a relevant gender change case; or
 - (d) the survivor of a civil partnership with an earner.
- (6) In relation to a widow of a female earner, the reference in subsection (5)(c) to a relevant gender change case is a reference to a case where—
- (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
 - (b) the marriage of the earner and her widow (that ends with the earner's death) subsisted before the time when the certificate was issued.”.
- (6) In section 47 (further provisions about effect of entitlement to guaranteed minimum pension on payment of social security benefits)(**122**), in subsection (1) after “widower” insert “, surviving same sex spouse”.
- (7) In section 84 (basis of revaluation)(**123**), in subsection (5), after “widower” insert “, surviving same sex spouse”.
- (8) In section 99(3)(b) (trustees' duties after exercise of option)(**124**), for “his widow” substitute “his or her surviving spouse or civil partner”.
- (9) In Schedule 3 (methods of revaluing accrued pension benefits)(**125**), in paragraph 1(1E)(b), after “widower” insert “, surviving same sex spouse”.

Jobseekers Act 1995

- 12.**—(1) Section 35 of the Jobseekers Act 1995(**126**) (interpretation) is amended as follows.
- (2) In subsection (1), for the definition of “couple” substitute—

(121) Section 37 was substituted by the Pensions Act 1995 (c.26), Schedule 5, paragraph 39. Subsection (4) was amended by the [Civil Partnership \(Contracted Out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005/2050](#), Schedule 1 paragraph 12; section 37(4)-(7) was, in relation to England and Wales, substituted by the 2013 Act, Schedule 4 paragraph 22.

(122) Section 47 was amended, in relation to England and Wales, by the 2013 Act, Schedule 4, paragraph 24. There are other amendments to that section not relevant to this Order.

(123) Section 84 was amended, in relation to England and Wales, by the 2013 Act, Schedule 4, paragraph 25. There are other amendments to that section not relevant to this Order.

(124) Section 99(3)(b) was amended, in relation to England and Wales, by the 2013 Act, Schedule 7, paragraph 32. There are other amendments to this section which are not relevant to this Order.

(125) Schedule 3 paragraph 1(1)-(3A) were substituted by the Pensions Act 2008 (c.30), Schedule 2, paragraph 2. Paragraph 1(1E) of Schedule 3 was amended, in relation to England and Wales, by the 2013 Act, Schedule 4, paragraph 26.

(126) 1995 c.18; the definition of “couple” in section 35(1) and subsection (1A) were inserted by the Civil Partnership Act 2004, Schedule 24, paragraph 124(1), (2) and (5), and amended by [S.I. 2014/560](#).

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, *The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014* ISBN 978-0-11-112240-2

“couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
 - (b) two people who are not married to, or civil partners of, each other but are living together as a married couple otherwise than in prescribed circumstances;”.
- (3) Omit subsection (1A).

Pensions Act 1995

13. In section 124(1) of the Pensions Act 1995(**127**) (interpretation of Part 1), omit the definition of “civil partnership status”.

State Pension Credit Act 2002

14.—(1) Section 17 of the State Pension Credit Act 2002(**128**) (other interpretation provisions) is amended as follows.

- (2) In subsection (1), for the definition of “couple” substitute—
“couple” means—
 - (a) two people who are married to, or civil partners of, each other and are members of the same household; or
 - (b) two people who are not married to, or civil partners of, each other but are living together as a married couple otherwise than in prescribed circumstances;”.
- (3) Omit subsection (1A).

Gender Recognition Act 2004

15.—(1) The Gender Recognition Act 2004(**129**) is amended as follows.

- (2) In section 2 (determination of applications), after subsection (3B) insert—
“(3C) 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.”.
- (3) In section 3 (evidence), after subsection (9) (as inserted by paragraph 18 of Schedule 5 to the 2013 Act)—
“(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.”.
- (4) After section 3D (evidence for granting applications on alternative grounds: Scotland) insert—

“3E Alternative grounds for granting applications: Scotland (English and Welsh residents)

(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.

(127) 1995 c.26; the definition of “civil partnership status” was inserted by S.I. 2005/2053 and was, in relation to England and Wales, repealed by S.I. 2014/560. There are other amendments to section 124(1) not relevant to this Order.

(128) 2002 c.16; the definition of “couple” in section 17(1) were inserted by the Civil Partnership Act 2004, Schedule 24, paragraphs 142(1) and (2), and amended by S.I. 2014/560, in relation to England and Wales. Subsection (1A) was inserted by paragraph 143 of Schedule 24 to the Civil Partnership Act 2004.

(129) 2004 c.7. Subsection (3B) was inserted into section 2 by the 2014 Act, schedule 2, paragraph 14. Section 3D was inserted by the 2014 Act, schedule 2, paragraph 17.

(2) In this section, and section 3F, in so far as those sections extend to England and Wales, “protected Scottish civil partnership” and “protected Scottish marriage” have the meanings given by section 25.

(3) 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 (4) to (7).

(4) The first condition is that the applicant was a party to a protected Scottish marriage or a protected Scottish civil partnership on or before the date the application was made.

(5) The second condition is that the applicant—

- (a) was living in the acquired gender six years before the commencement of section 29 of the Marriage and Civil Partnership (Scotland) Act 2014;
- (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.

(6) 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.

(7) The fourth condition is that the applicant is ordinarily resident in England or Wales.

(8) The Panel must reject the application if not required by subsection (3) to grant it.

3F Evidence for granting applications on alternative grounds: Scotland (English and Welsh residents)

(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 3E.

(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.

(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.

(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.

(5) The application must also include a statutory declaration by the applicant that the applicant meets the conditions in section 3E(3) and (4).

(6) The application must include—

- (a) a statutory declaration as to whether or not the applicant is married or a civil partner; and
- (b) any other information or evidence which the Panel which is to determine the application may require,

and may include any other information or evidence which the applicant wishes to include.

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- (7) If the applicant is married, the application must include a statutory declaration as to whether the marriage is a protected Scottish marriage.
- (8) If the applicant is married, and the marriage is a protected Scottish marriage, the application must also include—
- (a) 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
 - (b) a statutory declaration by the applicant that no such declaration by the applicant’s spouse is included.
- (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.
- (10) If the Panel which is to determine the application requires information or evidence under subsection (6)(b) it must give reasons for doing so.”.
- (5) In section 8 (appeals etc.), after subsection (5B) insert—
- “(5C) If an application under section 4C is granted, the applicant’s spouse or civil partner may apply to the High Court to quash the decision to grant the application on the grounds that its grant was secured by fraud.”.
- (6) After section 11B (change of gender of civil partners) insert—

“11C Continuity of marriage: Scotland

- (1) This section applies in relation to a protected Scottish marriage if (by virtue of section 4(3C)(a), 4C or 4E) a full gender recognition certificate is issued to a party to the marriage.
- (2) The continuity of the protected Scottish marriage is not affected by the issuing of a full gender recognition certificate.

11D Continuity of civil partnership: Scotland

- 11D** The continuity of a protected Scottish civil partnership is not affected by the issuing of full gender recognition certificates (by virtue of section 4(3C)(b)) to both civil partners.”.
- (7) In section 21(1A) (foreign gender change and marriage), omit “Scotland and”.

Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

- 16.** Section 14(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(**130**) (immigration officer: power of arrest) is amended as follows—
- (a) omit paragraph (b)(iv); and
 - (b) before paragraph (c), insert—
 - “(ba) an offence under section 24(A1) of the Marriage (Scotland) Act 1977 (c.15) (offences)(**131**),”.

(130) 2004 c.19.

(131) Section 24(A1) was inserted by section 28 of the 2014 Act.

Welfare Reform Act 2007

17.—(1) Paragraph 6 of Schedule 1 to the Welfare Reform Act 2007(132) (income-related allowance) is amended as follows.

(2) In sub-paragraph (5), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple otherwise than in prescribed circumstances;”.

(3) Omit sub-paragraph (6).

Human Fertilisation and Embryology Act 2008

18.—(1) The Human Fertilisation and Embryology Act 2008(133) is amended as follows.

(2) In section 35 (woman married at time of treatment)—

- (a) in the title to the section, after “**married**” insert “**to a man**”; and
- (b) in subsection (1)(a), after “marriage” insert “with a man”.

(3) In section 40(1)(b) (embryo transferred after death of husband etc. who did not provide sperm), after “marriage” insert “with a man”.

(4) In section 42 (woman in civil partnership at time of treatment)—

- (a) in the title to the section, after “**partnership**” insert “**or marriage to a woman**”; and
- (b) in subsection (1)—
 - (i) after “partnership” where it first occurs insert “or a marriage with another woman”; and
 - (ii) after “partnership” where it second occurs insert “or marriage”.

(5) In section 46 (embryo transferred after death of civil partner of intended female parent)—

- (a) in the title to the section, after “**civil partner**” insert “**or wife**”; and
- (b) in subsection (1)(b), after “partnership” insert “or marriage with another woman”; and
- (c) in subsection (1)(c), (d) and (e), after “partnership” in each case insert “or marriage”; and
- (d) in the words after subsection (1)(f), after “partnership” insert “or marriage”.

Equality Act 2010

19.—(1) The Equality Act 2010(134) is amended as follows.

(2) In section 67(135) (sex equality rule), for subsection (7) substitute—

“(7) If the effect of a relevant matter on a person (A) differs according to the effect it has on a person of the same sex as A, according to whether A is married, in a civil partnership, or for some other reason due to A’s family status, a comparison for the purposes of this section of the effect of that matter on persons of the opposite sex must be with a person of the opposite sex to A who is in the same position as A and in particular—

(132) 2007 c.5; paragraph 6 of Schedule 1 was amended by the Welfare Reform Act 2009 (c.24), sections 5(2), 9(3)(b) and 58(1) and Schedule 7 and S.I. 2014/560, and repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012. That repeal has been brought into force for certain purposes, but has yet to be brought into force for the remaining purposes.

(133) 2008 c.22. Sections 35, 40, 42 and 46 were amended by the 2013 Act, Schedule 7, paragraphs 37 to 41.

(134) 2010 c.15.

(135) Section 67(7) was substituted by S.I. 2014/560.

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- (a) where A is married to someone of the opposite sex, A is to be compared to a person of the opposite sex to A (“B”) where B is married to someone of the opposite sex to B;
 - (b) where A is married to someone of the same sex as A or is in a civil partnership, A is to be compared to B where B is married to someone of the same sex as B or is in a civil partnership.”.
- (3) Section 80(7)(**136**) (interpretation and exceptions: meaning of “civil partnership status”) is repealed.
- (4) In section 110(**137**) (liability of employees and agents), after subsection (5B) insert—
- “(5C) A does not contravene this section by refusing to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex.
 - (5D) A does not contravene this section by refusing to register a relevant Scottish civil partnership for the reason that the civil partnership is between two persons of the same sex.
 - (5E) Subsections (5C) and (5D) apply only if A is an approved celebrant.
 - (5F) Expressions used in subsections (5C) to (5E) have the same meaning as in paragraph 25B of Schedule 3.
 - (5G) A chaplain does not contravene this section by refusing to solemnise a relevant Scottish forces marriage for the reason that the marriage is the marriage of two persons of the same sex.
 - (5H) Expressions used in subsection (5G) have the same meaning as in paragraph 25C of Schedule 3.”.
- (5) In Schedule 3(**138**) (services and public functions: exceptions)—
- (a) before paragraph 25 insert—
“PART 6ZA
- MARRIAGE AND CIVIL PARTNERSHIP: SCOTLAND*”,
- (b) in paragraph 25, after sub-paragraph (2) insert—
 - “(3) An approved celebrant (A) does not contravene section 29, so far as relating to gender reassignment discrimination, only by refusing to register the civil partnership of a person (B) if A reasonably believes that B’s gender has become the acquired gender under the Gender Recognition Act 2004.
 - (4) In sub-paragraph (3) “approved celebrant” has the meaning given in section 94A(4) (a) of the Civil Partnership Act 2004(**139**).”, and
 - (c) after paragraph 25A insert—

(136) Section 80(7) was amended by [S.I. 2014/560](#).

(137) Section 110 was amended by the 2013 Act, section 2(5).

(138) Schedule 3 was amended by the 2013 Act, section 2(6).

(139) Section 94A of the Civil Partnership Act was inserted by section 24(13) of the 2014 Act.

“PART 6B

MARRIAGE OF SAME SEX COUPLES AND CIVIL PARTNERSHIP: SCOTLAND

25B Marriage of same sex couples and civil partnership: Scotland

(1) An approved celebrant does not contravene section 29 only by refusing to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex.

(2) An approved celebrant does not contravene section 29 only by refusing to register a relevant Scottish civil partnership for the reason that the civil partnership is between two persons of the same sex.

(3) A person does not contravene section 29 only by refusing to participate in a religious or belief ceremony forming part of, or connected with, the solemnising of a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex.

(4) A person does not contravene section 29 only by refusing to participate in a religious or belief ceremony forming part of, or connected with, the registration of a relevant Scottish civil partnership for the reason that the civil partnership is between two persons of the same sex.

(5) For the purposes of this paragraph, a person is an approved celebrant for the purposes of both marriage and civil partnership whether the person is an approved celebrant within the meaning of section 8(2)(a) of the Marriage (Scotland) Act 1977⁽¹⁴⁰⁾ or section 94A(4)(a) of the Civil Partnership Act 2004.

(6) In this paragraph—

“relevant Scottish civil partnership” means a religious or belief civil partnership within the meaning of section 94A(4)(b) of the Civil Partnership Act 2004;

“relevant Scottish marriage” means a religious or belief marriage of two persons of the same sex within the meaning of section 8(2)(a) of the Marriage (Scotland) Act 1977.

25C Marriage of same sex couples: Scottish forces marriages

(1) A chaplain does not contravene section 29 only by refusing to solemnise a relevant Scottish forces marriage according to religious rites or usages for the reason that the marriage is the marriage of two persons of the same sex.

(2) In this paragraph—

“chaplain” has the meaning given by paragraph (a) of the definition of “authorised person” in paragraph 12(2) of Schedule 6 to the Marriage (Same Sex Couples) Act 2013;

“forces marriage” has the meaning given by paragraph 12(2) of Schedule 6 to the Marriage (Same Sex Couples) Act 2013;

“relevant Scottish forces marriage” means a forces marriage of two persons of the same sex where Scotland is the relevant part of the United Kingdom within the

⁽¹⁴⁰⁾Section 8(2)(a) of the 1977 Act was amended by section 12(2)(c) of the 2014 Act.

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meaning of paragraph 12 of Schedule 6 to the Marriage (Same Sex Couples) Act 2013.”.

- (6) In Schedule 23 (general exceptions), in paragraph 2, after sub-paragraph (9) insert—
- “(9A) An organisation does not contravene Part 3, 4 or 7 only by refusing to allow premises owned or controlled by the organisation to be used—
- (a) to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex;
 - (b) to register a relevant Scottish civil partnership for the reason that the civil partnership is between two persons of the same sex.
- (9B) A person (or a group of persons) does not contravene Part 3, 4 or 7 only by refusing to allow premises owned or controlled by the person (or the group) on behalf of an organisation to be used—
- (a) to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex;
 - (b) to register a relevant Scottish civil partnership for the reason that the civil partnership is between two persons of the same sex.
- (9C) An organisation does not contravene section 29 only by allowing an approved celebrant of the organisation to act as set out in sub-paragraph (1) or (2) of paragraph 25B of Schedule 3.
- (9D) In sub-paragraphs (9A) to (9C), “approved celebrant”, “relevant Scottish marriage” and “relevant Scottish civil partnership” have the same meaning as in paragraph 25B of Schedule 3.”.

Welfare Reform Act 2012

- 20.**—(1) Section 39 of the Welfare Reform Act 2012(**141**) (couples) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) In this Part “couple” means—
- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
 - (b) two people who are not married to, or civil partners of, each other but are living together as a married couple.”.

(3) Omit subsection (2).

(4) In subsection (3)—

 - (a) in paragraph (a), for “husband and wife” substitute “married”; and
 - (b) in paragraph (b), for “a man and woman are to be treated as living together as husband and wife” substitute “two people are to be treated as living together as a married couple”.

Marriage (Same Sex Couples) Act 2013

21. Paragraphs 29 and 30 of Schedule 7 to the Marriage (Same Sex Couples) Act 2013(**142**) are repealed.

(141)2012 c.5. Section 39 was amended S.I. 2014/560.
(142)2013 c.30.

SCHEDULE 6

Article 31

CONSEQUENTIAL MODIFICATIONS TO SECONDARY LEGISLATION

Merchant Shipping (Maintenance of Seaman's Dependants) Regulations 1972

1. In the Merchant Shipping (Maintenance of Seamen's Dependants) Regulations 1972(143), in regulation 4(a) (expenses in respect of which a retention notice may be served), after "spouse" insert " , civil partner".

Social Security Benefit (Dependency) Regulations 1977

2. In paragraph 2C of Schedule 2 to the Social Security Benefit (Dependency) Regulations 1977(144) (interpretation), for the definition of "couple" substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978

3. In regulation 3(2) of the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978(145) (continuation in force of sections 36, 37 and 118(1) of the 1965 Act)—

- (a) omit the “and” at the end of sub-paragraph (c); and
- (b) after sub-paragraph (d) insert—
 - “and
 - (e) to extend section 37 of the 1965 Act to men and their late husbands, and women and their late wives.”.

Merchant Shipping (Returns of Births and Deaths) Regulations 1979

4. In regulation 11 of the Merchant Shipping (Returns of Births and Deaths) Regulations 1979(146) (rules for ascertaining appropriate Registrar General)—

- (a) in paragraph (2)(a), for the words from “(which” to “partnership)” substitute “(which relates to treatment provided to a woman who at the time of treatment is married to another woman, or in certain circumstances is a party to a void marriage with another woman, or party to a civil partnership or in certain circumstances a void civil partnership)”; and
- (b) for paragraph (2)(b) substitute—
 - “(b) section 43 of that Act (which relates to treatment provided to a woman where she agrees a second woman is to be the parent of the child) where the woman—
 - (i) is married to, or the civil partner of, the child's mother at the time of the child's birth; or

(143) S.I. 1972/1635; regulation 4(a) was substituted by S.I. 1972/1875 and amended by S.I. 1988/479 and S.I. 2014/107. There are other amending instruments but none is relevant.

(144) S.I. 1977/343; paragraph 2C was inserted by S.I. 1984/1699, and the definition of “couple” was inserted by S.I. 2005/2877 and substituted by S.I. 2014/107. There are other amending instruments but none is relevant.

(145) S.I. 1978/393. Regulation 3(2) was amended by regulation 2(1) and (3) of S.I. 2005/3078.

(146) S.I. 1979/1577; paragraph 2 was inserted by S.I. 2009/1892 and amended by S.I. 2014/107. There are other amending instruments but none is relevant.

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- (ii) was married to, or the civil partner of, the child’s mother at any time during the period beginning with the time mentioned in section 43(b) of that Act and ending with the child’s birth.”.

Income Support (General) Regulations 1987

5. In regulation 2(1) of the Income Support (General) Regulations 1987(**147**) (interpretation), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

Social Security (Claims and Payments) Regulations 1987

6. In regulation 2(1) of the Social Security (Claims and Payments) Regulations 1987(**148**) (interpretation), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

Judicial Pensions (Preservation of Benefits) Order 1988

7. In article 9 of the Judicial Pensions (Preservation of Benefits) Order 1988(**149**) (inalienability), for “widow” substitute “surviving spouse, surviving civil partner”.

Judicial Pensions (Requisite Benefits) Order 1988

8.—(1) The Judicial Pensions (Requisite Benefits) Order 1988(**150**) is amended as follows.

(2) In article 4 (office-holders to whom Order applies), for “his widow” substitute “that person’s surviving spouse or surviving civil partner”.

(3) In article 7 (widow’s benefits)—

- (a) in the heading, for “Widow’s” substitute “Surviving spouse’s or surviving civil partner’s”;
- (b) in paragraph (1), for “his widow” substitute “that person’s surviving spouse or surviving civil partner”; and
- (c) in paragraph (2), for “widow’s” substitute “surviving spouse’s or surviving civil partner’s”.

(4) In article 9 (widow’s guaranteed minimum pension)—

- (a) for the heading, substitute “Guaranteed minimum pension for surviving spouse or surviving civil partner”;

(147) S.I. 1987/1967; the definition of “couple” was substituted by S.I. 2005/2877 and by S.I. 2014/107. There are other amending instruments but none is relevant.

(148) S.I. 1987/1968; the definition of “couple” was inserted by S.I. 2005/2877 and substituted by S.I. 2014/107. Regulation 2 has been revoked for certain purposes by S.I. 2003/492. There are other amending instruments but none is relevant.

(149) S.I. 1988/1418; article 9 was amended by S.I. 2014/107. There are other amending instruments but none is relevant.

(150) S.I. 1988/1420; article 10 was amended by S.I. 2005/3325. Article 12 was amended by S.I. 1995/2647. Articles 4, 7, 9, 10 and 11 to 13 were amended by S.I. 2014/107. There are other amending instruments but none is relevant.

- (b) in paragraph (1)—
 - (i) for “his widow” substitute “that person’s surviving spouse or surviving civil partner”; and
 - (ii) for “her” substitute “that person’s”, and
- (c) in paragraph (3), for “widow’s” substitute “surviving spouse’s or surviving civil partner’s”.
- (5) Omit article 10 (widower’s or surviving civil partner’s guaranteed pension).
- (6) In article 11(3) (ascertainment of salary for requisite benefits), for “widow’s” substitute “surviving spouse’s or surviving civil partner’s”.
- (7) In article 12 (contribution in event of marriage during retirement)—
 - (a) for paragraph (1) substitute—

“(1) Where on the date when an office-holder (“O”) ceases to hold office, O is neither married, nor in a civil partnership, O may be required to undertake, in return for payment to O of a lump sum under or by virtue of whichever of the enactments mentioned in paragraph (2) below is applicable to O, that the first time O—

 - (a) marries (and where O has not previously entered into a civil partnership); or
 - (b) enters into a civil partnership (and where O has not previously married),

O will pay a contribution in respect of the benefits that may become payable to O’s surviving spouse or surviving civil partner by virtue of articles 7 and 9.”; and
 - (b) for paragraph (3) substitute—

“(3) The contribution referred to in paragraph (1) above shall be equal to 1 7/8 per cent of O’s final salary multiplied by the number of whole years of relevant service of O’s prior to the Principal Appointed Day which were—

 - (a) completed by O before O attained pensionable age; and
 - (b) not years—
 - (i) during any part of which O was married or in a civil partnership; or
 - (ii) preceding a marriage of O’s contracted, or a civil partnership of O’s entered into, before O ceased to hold office.”.
- (8) For article 13 (marriage shortly before death), substitute—

“Marriage or entry into a civil partnership shortly before death

13. Where an office-holder (“O”) marries or enters into a civil partnership after O has ceased to hold office, and not more than six months before O’s death, any pension paid to O’s surviving spouse or surviving civil partner by virtue of this Order shall be limited to the guaranteed minimum pension due to that person.”.

Child Support (Maintenance Assessments and Special Cases) Regulations 1992

9. In regulation 1(2) of the Child Support (Maintenance Assessments and Special Cases) Regulations 1992⁽¹⁵¹⁾ (interpretation), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or

⁽¹⁵¹⁾S.I. 1992/1815; the definition of “couple” was inserted by S.I. 1993/913, and substituted by S.I. 2005/2877 and by S.I. 2014/107. These Regulations have been revoked for certain purposes by S.I. 2001/155 and S.I. 2012/2785 but are subject to saving provisions in S.I. 2013/2947. There are other amendments to the Regulations but none is relevant.

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- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

Child Support (Collection and Enforcement) Regulations 1992

10. In regulation 3(9) of the Child Support (Collection and Enforcement) Regulations 1992(**152**) (methods of payment), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

Jobseeker’s Allowance Regulations 1996

11. In regulation 1(3) of the Jobseeker’s Allowance Regulations 1996(**153**) (interpretation), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

Occupational Pension Schemes (Contracting-out) Regulations 1996

12.—(1) The Occupational Pension Schemes (Contracting-out) Regulations 1996(**154**) are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation), omit paragraph (1A)(**155**).

(3) In regulation 26(**156**) (reference scheme: circumstances in which widows’, widowers’ or surviving civil partners’ pensions need not be payable)—

- (a) in paragraph (1)(b), after paragraph (ii) insert “or” and for paragraphs (iii) and (iv) substitute—

“(iii) lives together as a married couple with another person whom he or she is not married to or in a civil partnership with,”,

- (b) in paragraph (1)(c), for paragraphs (i) and (ii) substitute “living together as a married couple with another person whom he or she is not married to or in a civil partnership with.”; and

- (c) for paragraph (2) substitute—

“(2) The following provisions do not apply where the scheme member died before 5th December 2005—

- (a) paragraph (1)(b)(i) so far as it relates to a marriage or remarriage involving two people of the same sex;

(152) S.I. 1992/1989; paragraphs (3) to (9) of regulation 3 were inserted by S.I. 2008/2544 and amended by S.I. 2014/107. There are other amending instruments but none is relevant.

(153) S.I. 1996/207; the definition of “couple” was substituted by S.I. 2005/2877 and S.I. 2014/107. There are other amending instruments but none is relevant.

(154) S.I. 1996/1172.

(155) Regulation 1(1A) was inserted by S.I. 2005/2050 and amended by S.I. 2014/107.

(156) Regulation 26 was substituted by S.I. 2005/2050 and amended by S.I. 2014/107.

- (b) paragraph (1)(b)(ii); and
 - (c) paragraph (1)(b)(iii) and (1)(c) so far as they relate to the living together of two people of the same sex.”.
- (4) In regulation 57(**157**) (circumstances in which widower’s or surviving civil partner’s guaranteed minimum pension is to be payable)—
- (a) in the heading—
 - (i) after “Circumstances” insert “for the purposes of section 17(6) of the 1993 Act”; and
 - (ii) after “widower’s” insert “, widow’s”,
 - (b) in the opening words, after “widower’s” insert “, widow’s”; and
 - (c) in paragraphs (a), (b) and (c), after “widower” in each place it occurs, insert “, widow”.
- (5) In regulation 58(**158**) (period for which widower’s or surviving civil partner’s guaranteed minimum pension is to be payable)—
- (a) in the heading—
 - (i) after “Period” insert “for the purposes of section 17(6) of the 1993 Act”; and
 - (ii) after “widower’s” insert “, widow’s”,
 - (b) in paragraph (1)(a) and (c), after “widower’s” insert “, widow’s”;
 - (c) in paragraph (2)(a), after “widower’s” insert “or widow’s”;
 - (d) in paragraph (2)(b), after “widower” insert “or widow”;
 - (e) in paragraph (2)(c)—
 - (i) after “widower” insert “, widow”; and
 - (ii) for paragraphs (i) and (ii) substitute “he or she and another person are living together as a married couple.”,
 - (f) in paragraph (2)(d)—
 - (i) after “widower” insert “or widow”;
 - (ii) for “he attained” substitute “he or she attained”; and
 - (iii) for paragraphs (i) and (ii) substitute “he or she and another person whom he or she was not married to, or in a civil partnership with, were living together as a married couple; or”,
 - (g) in paragraph (2)(e), for paragraphs (i) and (ii) substitute “he or she and another person whom he or she was not married to, or in a civil partnership with, were living together as a married couple.”; and
 - (h) for paragraph (3) substitute—

“(3) The following provisions do not apply where a man became a widower before 5th December 2005—

 - (a) paragraph (2)(a) so far as it relates to a marriage or remarriage involving two people of the same sex;
 - (b) paragraph (2)(b); and
 - (c) paragraphs (2)(c) and (2)(d) so far as they relate to the living together of two people of the same sex.”.

(157) Regulation 57 was amended by [S.I. 2005/2050](#) and [S.I. 2014/107](#).

(158) Regulation 58 was amended by [S.I. 2005/2050](#) and [S.I. 2014/107](#).

(6) In regulation 59(**159**) (statutory references to persons entitled to guaranteed minimum pensions: application to widowers and surviving civil partners)—

- (a) in the heading, for “widowers” substitute “widowers, widows of female earners”; and
- (b) for the words from “so entitled” to the end substitute—

“so entitled—

- (a) by virtue of being a widower of an earner only in the case where the earner and the widower were both over pensionable age when the earner died;
- (b) by virtue of being a widow of a female earner only in the case where the earner and the widow were both over pensionable age when the earner died; or
- (c) by virtue of being the surviving civil partner of an earner only in the case where the earner and the surviving civil partner were both over pensionable age when the earner died.”.

(7) In regulation 69B(**160**) (conversion of guaranteed minimum pensions into other benefits: survivors’ benefits)—

- (a) in paragraph (2)(b)(ii), for “such a widower” substitute “in a case where section 17(6) of the 1993 Act applies, such a widower’s, widow’s”;
- (b) in paragraph (3)(b)(i), for sub-paragraphs (aa) and (bb) (but not the “nor” following sub-paragraph (bb)) substitute “another person are living together as a married couple,”; and
- (c) for paragraph (4) substitute—

“(4) The following provisions do not apply where the earner died before 5th December 2005—

- (a) paragraph (3)(b)(i) so far as it relates to the living together of two people of the same sex;
- (b) paragraph (3)(b)(ii)(aa) so far as it relates to a marriage involving two people of the same sex; and
- (c) paragraph (3)(b)(ii)(bb).”.

Contracting-out (Transfer and Transfer Payment) Regulations 1996

13.—(1) Schedule 2 to the Contracting-out (Transfer and Transfer Payment) Regulations 1996(**161**) (modifications of Part 3 of the 1993 Act) is amended as follows.

(2) In paragraph 1, in the substituted definition of “guaranteed minimum pension” for “or widower’s” substitute “, widower’s or surviving same sex spouse’s”.

(3) In paragraph 6, in the substituted definition of “guaranteed minimum pension” for “or widower’s” substitute “, widower’s or surviving same sex spouse’s”.

Social Security Benefit (Computation of Earnings) Regulations 1996

14. In regulation 2(1) of the Social Security Benefit (Computation of Earnings) Regulations 1996(**162**) (interpretation), for the definition of “couple” substitute—

““couple” means—

(159) Regulation 59 was amended by the Pensions Act 1995 c.26 (paragraph 47 of Schedule 5), S.I. 2005/2050 and S.I. 2014/107.

(160) Regulation 69B was inserted by S.I. 2009/846 and amended by S.I. 2014/107.

(161) S.I. 1996/1462, Schedule 2 amended by S.I. 1997/786 and S.I. 2014/107; there are other amending instruments but none is relevant.

(162) S.I. 1996/2745; the definition of “couple” was substituted by S.I. 2005/2919 and S.I. 2014/107. There are other amending instruments but none is relevant.

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

Social Security (Child Maintenance Bonus) Regulations 1996

15. In regulation 1(2) of the Social Security (Child Maintenance Bonus) Regulations 1996(**163**) (interpretation), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

Occupational Pension Schemes (Discharge of Liability) Regulations 1997

16.—(1) The Occupational Pension Schemes (Discharge of Liability) Regulations 1997(**164**) are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation), omit paragraph (1A).

(3) In regulation 11 (conditions on which liability to provide pensions under a relevant scheme may be discharged)—

(a) in paragraph (4)(b)—

(i) for paragraphs (iii) and (iv) substitute—

“(iii) lives together as a married couple with another person whom he or she is not married to or in a civil partnership with; or”, and

(ii) in paragraph (v), for sub-paragraphs (a) and (b) substitute “is living together as a married couple with another person whom he or she is not married to or in a civil partnership with.”, and

(b) for paragraph (7) substitute—

“(7) The following provisions do not apply where the beneficiary died before 5th December 2005—

- (a) paragraph (4)(b)(i) so far as it relates to a marriage or remarriage involving two people of the same sex;
- (b) paragraph (4)(b)(ii); and
- (c) paragraphs (iii) and (v) of paragraph (4)(b) so far as they relate to the living together of two people of the same sex.”.

Working Time Regulations 1998

17. In Schedule 3 (enforcement) to the Working Time Regulations 1998(**165**), in paragraph 2(3), for “husband or wife” substitute “spouse or civil partner”.

(163) *S.I. 1996/3195*; the definition of “couple” was substituted by *S.I. 2005/2877* and *S.I. 2014/107*. There are other amending instruments but none is relevant.

(164) *S.I. 1997/784*; Regulations 1 and 11 were amended by *S.I. 2005/2050* and *S.I. 2014/107*. There are other amending instruments but none is relevant.

(165) *S.I. 1998/1833*; Schedule 3 was inserted by *S.I. 2003/1684* and amended by *S.I. 2014/107*. There are other amending instruments but none is relevant.

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, *The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014* ISBN 978-0-11-112240-2

Social Security and Child Support (Decisions and Appeals) Regulations 1999

18. In regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999(**166**) (interpretation), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

Social Fund Winter Fuel Payment Regulations 2000

19. In regulation 1(2) of the Social Fund Winter Fuel Payment Regulations 2000(**167**) (interpretation), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

Child Support (Maintenance Calculations and Special Cases) Regulations 2001

20. In regulation 1(2) of the Child Support (Maintenance Calculations and Special Cases) Regulations 2000(**168**) (interpretation), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001

21. In regulation 1(2) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(**169**) (interpretation), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

(**166**) *S.I. 1999/991*; the definition of “couple” was inserted by *S.I. 2005/2878* and substituted by *S.I. 2014/107*. There are other amending instruments but none is relevant.

(**167**) *S.I. 2000/729*; the definition of “couple” was inserted by *S.I. 2005/2877* and substituted by *S.I. 2014/107*. There are other amending instruments but none is relevant.

(**168**) *S.I. 2001/155*; the definition of “couple” was substituted by *S.I. 2005/2877* and by *S.I. 2014/107*. These Regulations have been revoked by *S.I. 2012/2785* but are subject to saving provisions in *S.I. 2013/2878*. There are other amending instruments but none is relevant.

(**169**) *S.I. 2001/1002*; the definition of “couple” was inserted by *S.I. 2005/2878* and substituted by *S.I. 2014/107*. There are other amending instruments but none is relevant.

Open-Ended Investment Companies Regulations 2001

22. In regulation 13 of the Open-Ended Investment Companies Regulations 2001(**170**) (particulars of directors), for paragraph (4)(b)(iii) substitute—

“(iii) in the case of a married person, the name by which that person was known previous to the marriage; and”.

State Pension Credit Regulations 2002

23. In regulation 1(2) of the State Pension Credit Regulations 2002(**171**) (interpretation), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

Pension Protection Fund (Compensation) Regulations 2005

24. In regulation 1(2) of the Pension Protection Fund (Compensation) Regulations 2005(**172**) (interpretation), for the definition of “relevant partner” substitute—

““relevant partner” means a person who was not married to, or in a civil partnership with, the member but who was living with the member as if that person and the member were a married couple;”.

Financial Assistance Scheme Regulations 2005

25. In regulation 2(1) of the Financial Assistance Scheme Regulations 2005(**173**) (interpretation), for the definition of “partner” substitute—

““partner” means a person who was not married to, or in a civil partnership with, the qualifying member but who was living with that member as if that person and the qualifying member were a married couple;”.

Social Fund Maternity and Funeral Expenses (General) Regulations 2005

26. In regulation 3(1) of the Social Fund Maternity and Funeral Expenses (General) Regulations 2005(**174**) (interpretation), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

(170) S.I. 2001/1228; regulation 13(4) was amended by S.I. 2011/1265 and S.I. 2014/107. There are other amending instruments but none is relevant.

(171) S.I. 2002/1792; the definition of “couple” was inserted by S.I. 2005/2877 and substituted by S.I. 2014/107. There are other amending instruments but none is relevant.

(172) S.I. 2005/670; the definition of “relevant partner” was substituted by S.I. 2006/580 and by S.I. 2014/107. There are other amending instruments but none is relevant.

(173) S.I. 2005/1986; the definition of “partner” was inserted by S.I. 2009/1851 and substituted by S.I. 2014/107. There are other amending instruments but none is relevant.

(174) S.I. 2005/3061; the definition of “couple” was substituted by S.I. 2014/107. There are other amending instruments but none is relevant.

Housing Benefit Regulations 2006

27. In regulation 2(1) of the Housing Benefit Regulations 2006(175) (interpretation), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

28. In regulation 2(1) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(176) (interpretation), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006

29. In regulation 1(2) of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006(177) (interpretation), for the definition of “relevant partner” substitute—

““relevant partner” means a person who is not married to, or in a civil partnership with, the member but who is living with the member as if that person and the member were a married couple;”.

Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006

30. In Part 2 of Schedule 6 to the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006(178) (interpretation)—

- (a) in paragraph (a) of the definition of “dependant living as a spouse”—
 - (i) omit “of the opposite sex”; and
 - (ii) after “who is not married to,” insert “or in a civil partnership with,” and
- (b) in the definition of “dependant living as a civil partner”, after “who has not” insert “married or”.

(175) S.I. 2006/213; the definition of “couple” was substituted by S.I. 2014/107; There are other amending instruments but none is relevant.

(176) S.I. 2006/214; the definition of “couple” was substituted by S.I. 2014/107; There are other amending instruments but none is relevant.

(177) S.I. 2006/580; the definition of “relevant partner” was substituted by S.I. 2014/107. There are other amending instruments but none is relevant.

(178) S.I. 2006/606; the definition of “dependant living as a spouse” was amended by S.I. 2006/1455 and substituted by S.I. 2014/107. The definition of “dependant living as a civil partner” was amended by S.I. 2014/107.

Occupational Pension Schemes (Modification of Schemes) Regulations 2006

31.—(1) The Occupational Pension Schemes (Modification of Schemes) Regulations 2006(179) are amended as follows.

(2) In regulation 3 (non-application of the subsisting rights provisions)—

(a) omit “or” after paragraph (h);

(b) at the end of paragraph (i) insert “or”; and

(c) after paragraph (i) insert—

“(j) which provides in relation to all or part of a member’s subsisting rights that after the member’s death—

(i) a surviving same sex spouse is treated in the same way as a woman whose deceased spouse was a man, or a man whose deceased spouse was a woman; and

(ii) the rights of any other survivor of the member are determined as if the surviving same sex spouse were a woman whose deceased spouse was a man, or a man whose deceased spouse was a woman.”.

(3) After regulation 7 insert—

“Modification of schemes: surviving same sex spouses

7ZA.—(1) Subject to paragraph (2), the trustees of a trust scheme may by resolution modify the scheme in relation to all or part of a member’s subsisting rights so that after the member’s death—

(a) a surviving same sex spouse is treated in the same way as a woman whose deceased spouse was a man, or a man whose deceased spouse was a woman; and

(b) the rights of any other survivor are determined as if the surviving same sex spouse were a woman whose deceased spouse was a man, or a man whose deceased spouse was a woman.

(2) A modification under paragraph (1) which confers rights on surviving same sex spouses which are in excess of what is required to comply with the relevant requirements of the Marriage (Same Sex Couples) Act 2013 and the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership 2004 (Consequential Provisions and Modifications) Order 2014 shall not be made unless—

(a) the employer in relation to the scheme consents; or

(b) in the case of a scheme where there is more than one employer—

(i) a person nominated by the employers, or otherwise in accordance with the scheme rules, to act as the employers’ representative (the “nominee”) consents; or

(ii) where there is no such nominee, all of the employers in relation to the scheme consent other than any employer who has waived his right to give such consent.”.

(179) S.I. 2006/759; Regulation 3 was amended by S.I. 2014/107. There are other amending instruments but none is relevant.

Employment and Support Allowance Regulations 2008

32. In regulation 2(1) of the Employment and Support Allowance Regulations 2008(**180**) (interpretation), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

Reserve Forces Non Regular Permanent Staff (Pension and Attributable Benefits Schemes) Regulations 2011

33. In Schedule 1 to the Reserve Forces Non Regular Permanent Staff (Pension and Attributable Benefits Schemes) Regulations 2011(**181**) (non regular permanent staff pension scheme), in paragraph D.8 (suspension and restoration of pensions), for paragraph (4) substitute—

“(4) This paragraph applies while the surviving spouse or civil partner and another person are living together as if they were married.”.

Employment and Support Allowance Regulations 2013

34. In regulation 2 of the Employment and Support Allowance Regulations 2013(**182**) (interpretation), for the definition of “couple” substitute—

““couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”.

Pensions Increase (Review) Orders 1991 to 2009 and 2011 to 2013

35. In each of—

- (a) the Pensions Increase (Review) Order 1991(**183**);
- (b) the Pensions Increase (Review) Order 1992(**184**);
- (c) the Pensions Increase (Review) Order 1993(**185**);
- (d) the Pensions Increase (Review) Order 1994(**186**);
- (e) the Pensions Increase (Review) Order 1995(**187**);
- (f) the Pensions Increase (Review) Order 1996(**188**);

(180) S.I. 2008/794; the definition of “couple” was substituted by S.I. 2014/107. There are other amending instruments but none is relevant.

(181) These Regulations are not statutory instruments. Copies can be found at <http://www.gov.uk/government/publications/reserve-forces-pension-scheme-regulations>. Hard copies can be obtained from CDP-Remuneration, Armed Forces Pensions, Level 6 Zone M, Ministry of Defence, Main Building, London SW1A 2HB. Paragraph (4) was amended by S.I. 2014/107.

(182) S.I. 2013/379; the definition of “couple” was substituted by S.I. 2014/107. There are other amending instruments but none is relevant.

(183) S.I. 1991/684; article 6 was substituted by S.I. 2014/107.

(184) S.I. 1992/198; article 6 was substituted by S.I. 2014/107.

(185) S.I. 1993/779; article 6 was substituted by S.I. 2014/107.

(186) S.I. 1994/776; article 6 was substituted by S.I. 2014/107.

(187) S.I. 1995/708; article 6 was substituted by S.I. 2014/107.

(188) S.I. 1996/800; article 6 was substituted by S.I. 2014/107.

- (g) the Pensions Increase (Review) Order 1997(**189**);
- (h) the Pensions Increase (Review) Order 1998(**190**);
- (i) the Pensions Increase (Review) Order 1999(**191**);
- (j) the Pensions Increase (Review) Order 2000(**192**);
- (k) the Pensions Increase (Review) Order 2001(**193**);
- (l) the Pensions Increase (Review) Order 2002(**194**);
- (m) the Pensions Increase (Review) Order 2003(**195**);
- (n) the Pensions Increase (Review) Order 2004(**196**);
- (o) the Pensions Increase (Review) Order 2005(**197**);
- (p) the Pensions Increase (Review) Order 2006(**198**);
- (q) the Pensions Increase (Review) Order 2007(**199**);
- (r) the Pensions Increase (Review) Order 2008(**200**);
- (s) the Pensions Increase (Review) Order 2009(**201**);
- (t) the Pensions Increase (Review) Order 2011(**202**);
- (u) the Pensions Increase (Review) Order 2012(**203**); and
- (v) the Pensions Increase (Review) Order 2013(**204**),

for article 6 (reductions in respect of guaranteed minimum pensions) substitute—

“6. The amount by reference to which any increase in the rate of a surviving spouse’s or surviving civil partner’s pension provided for by this Order is to be calculated shall, where the pensioner becomes entitled on the death of the deceased spouse or deceased civil partner to a guaranteed minimum pension, be reduced in accordance with section 59(5ZA) of the 1975 Act.”.

(189) S.I. 1997/634; article 6 was substituted by S.I. 2014/107.

(190) S.I. 1998/503; article 6 was substituted by S.I. 2014/107.

(191) S.I. 1999/522; article 6 was substituted by S.I. 2014/107.

(192) S.I. 2000/672; article 6 was substituted by S.I. 2014/107.

(193) S.I. 2001/664; article 6 was substituted by S.I. 2014/107.

(194) S.I. 2002/699; article 6 was substituted by S.I. 2014/107.

(195) S.I. 2003/681; article 6 was substituted by S.I. 2014/107.

(196) S.I. 2004/758; article 6 was substituted by S.I. 2014/107.

(197) S.I. 2005/858; article 6 was substituted by S.I. 2014/107.

(198) S.I. 2006/741; article 6 was substituted by S.I. 2014/107.

(199) S.I. 2007/801; article 6 was substituted by S.I. 2014/107.

(200) S.I. 2008/711; article 6 was substituted by S.I. 2014/107.

(201) S.I. 2009/692; article 6 was substituted by S.I. 2014/107.

(202) S.I. 2011/827; article 6 was substituted by S.I. 2014/107.

(203) S.I. 2012/782; article 6 was substituted by S.I. 2014/107.

(204) S.I. 2013/604; article 6 was substituted by S.I. 2014/107.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provisions and modifications in consequence of same sex marriage becoming lawful under the Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”) and the introduction of civil partnerships under the Civil Partnership Act 2004 (“the 2004 Act”).

Part 1

Part 1 of the Order contains interpretation and extent provisions for the Order.

Part 2

Part 2 of, and Schedules 1 to 4 to, the Order make consequential provision and modifications about the meaning of “marriage” and related expressions in the reserved law of Scotland.

Part 1 of Schedule 1 creates a statutory gloss (“the gloss”) so that, in the reserved law of Scotland, marriage has the same effect in relation to same sex couples as it does in relation to opposite sex couples. The “reserved law of Scotland” is defined in paragraph 1(4) of Part 1 of that Schedule. Part 2 of Schedule 1 makes provision about the interpretation of various marriage related terms in both existing and new Scottish legislation. This is similar to what was done for the law of England and Wales in the Marriage (Same Sex Couples) Act 2013, but arises as a result of same sex marriage becoming lawful in Scotland under the 2014 Act.

Schedule 2 makes contrary provision to the gloss in Schedule 1. Part 1 of that Schedule makes general provision and Part 2 makes specific provision.

Schedule 3 makes modifications to specific primary and secondary legislation as a result of the contrary provision to the gloss in Schedule 2. These modifications replicate amendments made by the Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014 ([S.I. 2014/560](#)).

Schedule 4 to the Order makes consequential modifications to the Social Security Pensions Act 1975 and the Social Security Contributions and Benefits Act 1992.

The modifications in Schedule 4 replicate for Scotland the amendments made by the Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014 ([S.I. 2014/560](#)), and makes further provisions in respect of transgender couples.

Part 3

Part 3 of the Order makes consequential provision about the treatment of Scottish same sex marriages in Northern Ireland. The provisions mean that a same sex marriage registered in Scotland is deemed to be a civil partnership in Northern Ireland. A final order or separation order made in Northern Ireland in respect of a deemed civil partnership has the same effect in relation to the actual same sex marriage as it does in relation to the deemed civil partnership.

Part 4

Part 4 of the Order makes consequential provision about a person’s entitlement to state pension based on a current or deceased spouse’s or civil partner’s National Insurance record. This Part of the Order

replicates what was done for England and Wales in Part 5 of Schedule 4 to the Marriage (Same Sex Couples) Act 2013.

Part 5

Part 5 of the Order makes consequential provision about armed forces and consular same sex marriages. Chapter 1 of Part 5 concerns armed forces same sex marriages which take place in accordance with the Overseas Marriage (Armed Forces) Order 2014 ([S.I. 2014/1108](#)) in circumstances where Scotland is the relevant part of the United Kingdom.

Chapters 2 to 4 of Part 5 of the Order makes consequential provision and modifications about consular and armed forces marriage between civil partners where the civil partnership was registered in Scotland or the civil partners elected Scotland as the relevant part of the United Kingdom for registration purposes.

Part 6

Part 6 of, and Schedules 5 and 6 to, the Order make consequential modifications to primary and secondary legislation respectively.

The modifications in Schedules 5 and 6 relate to civil partners, marriage and related expressions.