

# MARRIAGE (SAME SEX COUPLES) ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS AND SCHEDULES

#### *Schedule 7 – Transitional and consequential provision etc*

##### **Part 1 – Transitional and transitory provision**

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

##### *Examples*

- A hotel has already been approved by a local authority as a place where civil marriage ceremonies and civil partnerships can take place. The licence of approval will automatically extend to allowing for marriage of same sex couples.
- A hotel wishes to apply to be approved as a place where civil marriage ceremonies and civil partnerships can take place. The approval, if granted, will apply to both same sex and opposite sex marriage ceremonies.

##### **Part 2 – Minor and consequential amendments**

189. **Part 2** (paragraphs 2-21) makes amendments to the Marriage Act.
190. **Paragraph 3** amends section 3 (Marriages of persons under 18) of the Marriage Act. The effect of this amendment is that a person who has previously been a civil partner and whose partner has died will not need to get parental consent for marrying another person even if he or she is under 18.
191. **Paragraph 4** amends section 25 (Void marriages) to provide that marriages of same sex couples according to the rites of the Church of England will be void. Paragraph 5 amends section 27A of the Marriage Act to extend the provisions for requiring additional information for detained or house-bound marriages to such marriages of same sex couples.
192. **Paragraph 6** inserts a new section 27D into the Marriage Act to provide that the superintendent registrar may require a copy of the relevant governing authority’s consent in the cases of marriage of same sex couples in respect of Quaker marriages and marriages under the rites of the Jewish religion, and marriage of a house-bound or detained person.

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193. [Paragraph 7](#) amends section 28A of the Marriage Act to insert a power for the superintendent registrar to require the relevant governing authority to give evidence of the consent required for Quaker, Jewish or detained or house-bound marriages of same sex couples.
194. [Paragraph 8](#) amends the title of section 41 of the Marriage Act to refer to a marriage of a man and a woman and applies the provisions of section 41 only to the marriage of a man and a woman.
195. [Paragraph 9](#) amends section 42 of the Marriage Act dealing with cancellation of registration of premises no longer used, to apply this provision only to buildings registered to carry out marriages of opposite sex couples.
196. [Paragraph 10](#) amends section 43 of the Marriage Act to take account of different statutory provisions which apply to the registration of religious buildings for marriages of same sex and opposite sex couples. The power to appoint an authorised person may be exercised within one year of the building's registration to solemnize marriages (whether marriages of an opposite sex or same sex couple).
197. [Paragraphs 11 and 12](#) insert and amend internal cross-references in sections 44 and 45A of the Marriage Act regarding solemnization of marriages in registered buildings and solemnization of marriages at one of the parties' place of residence.
198. [Paragraph 13](#) inserts new subsections (1A) to (1D) into section 46 of the Marriage Act to provide for a religious ceremony after a registrar's marriage of a same sex couple (except for the Church of England and Church in Wales) and providing the religious organisation has consented to such ceremonies.
199. [Paragraph 14](#) makes consequential amendments to section 48 of the Marriage Act to ensure that a lack of consent to marriage of same sex couples or to registration of the building in which the marriage took place on the part of the relevant governing body does not affect the validity of the marriage.
200. [Paragraph 15](#) inserts new section 49A which provides that a marriage of a same sex couple will be void if they have knowingly and wilfully married in the absence of the required consent to the marriage of same sex couples.
201. [Paragraph 16](#) amends section 53 of the Marriage Act to provide that where a couple marry under the rites of the Jewish religion, the secretary of their synagogue registers the marriage and, where the couple are members of different synagogues, they can nominate which secretary registers their marriage.
202. [Paragraph 17](#) inserts a reference to people authorised to register marriages of opposite sex couples into section 69 of the Marriage Act (Licensing of chapels for marriages according to the Church of England or Church in Wales).
203. [Paragraph 18](#) inserts a reference to buildings registered to solemnize marriages of opposite sex couples into section 70 of the Marriage Act (which deals with the registration of chapels for marriages otherwise than according to the rites of the Church of England or the Church in Wales).
204. [Paragraph 19](#) inserts references to marriage of same sex couples into section 75 of the Marriage Act (Offences relating to solemnization of marriage).
205. [Paragraph 20](#) amends section 78 of the Marriage Act (Interpretation) to provide an amended definition of an "authorised person" to make clear how it applies in relation to both an opposite sex marriage ceremony and a same sex marriage ceremony and an updated definition of a "registered building". It also defines England and Wales legislation in the context of the Marriage Act.
206. [Paragraph 21](#) amends Schedule 4 to the Marriage Act (Provisions of the Act excluded or modified in their application to Naval, Military and Air Force chapels) to insert

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references to provisions for marriage of same sex couples and provides a definition of England and Wales legislation for the Marriage Act.

207. [Paragraphs 22 to 25](#) amend sections 1 and 2 of the Marriage (Registrar General's Licence) Act 1970 with the effect that the superintendent registrar has the power to require the governing authority of a religious body which proposes to conduct a "deathbed marriage" of a same sex couple to provide evidence of its consent to marriage of same sex couples. This ensures that equivalent religious protections are applied to these marriages, and gives the superintendent registrar the same powers to require evidence of consent in respect of deathbed marriages as he or she has for other marriages of same sex couples according to religious rites which do not take place on appropriately registered premises. Paragraph 25 inserts a new section 13A which provides that, as for other marriages of same sex couples, a marriage of a same sex couple under the deathbed marriage provisions will be void, if they have knowingly and wilfully married in the absence of the required consent to the marriage of same sex couples.
208. [Paragraphs 26 and 27](#) repeal section 11(c) of the Matrimonial Causes Act 1973 with the effect that the fact that a couple are not a man and a woman does not make a marriage void.
209. [Paragraph 28](#) amends section 29JA of the Public Order Act 1986 to ensure that discussion or criticism of marriage which concerns the sex of the parties to it are not taken in themselves to be threatening or intended to stir up hatred.
210. [Paragraphs 29 and 30](#) make consequential amendments to the Social Security Contributions and Benefits Act 1992.
211. [Paragraphs 31 and 32](#) make consequential amendments to section 99 of the Pension Schemes Act 1993. Section 99 sets out the duties of trustees or managers of schemes after a member has exercised the option conferred by section 95 (Ways of taking right to cash equivalent). Section 99(3)(b) refers only to the pension or benefits of a member or his widow. Paragraph 32 amends section 99(3)(b) so that it applies to the pension and benefits of a member and his or her spouse or civil partner.
212. [Paragraphs 33 to 36](#) amend the Civil Partnership Act.
213. [Paragraph 34](#) amends the provisions in section 1(3) of the Civil Partnership Act, which set out how a civil partnership can be ended. The amendment provides that, in addition to death, dissolution and annulment, a civil partnership ends if it is converted into a marriage under section 9 of the Act.
214. [Paragraph 35](#) amends section 4 of the Civil Partnership Act, which provides that, where a person wishing to register a civil partnership is under 18 years of age, the consent of an appropriate person or persons is required. Subsection 4(3) of the Civil Partnership Act currently provides that this requirement does not apply if the child is a surviving civil partner.
215. The effect of this amendment is that a widow or widower under the age of 18 will not require the consent of another person before entering into a civil partnership.

*Example*

- A 17 year old widow does not have to obtain the consent of one of her parents who has parental responsibility for her before entering into a civil partnership.
216. [Paragraphs 37 to 41](#) make provision for the general principle that the civil partnership recognitions in the Human Fertilisation and Embryology Act 2008 are extended to marriage of same sex couples.
  217. [Paragraphs 42 to 45](#) make amendments to the Equality Act 2010. In particular, paragraph 43 amends section 23 (Comparison by reference to circumstances) to make clear that, where the protected characteristic is sexual orientation, it is not a material

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difference for the purposes of comparison, when considering a claim of discrimination, that a person is married to someone of the same sex while another is married to someone of the opposite sex.

218. [Paragraph 45](#) amends paragraph 2 of Schedule 9 to the Equality Act 2010 (Religious requirements relating to sex, marriage etc, sexual orientation) so that, where employment is for the purposes of an organised religion, an occupational requirement may allow a restriction that a person should not be married to someone of the same sex. This means, for example, that a church may require that a priest not be married to a person of the same sex.