

# MARRIAGE (SAME SEX COUPLES) ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS AND SCHEDULES

#### *Schedule 2 – Extra-territorial matters*

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

96. [Paragraph 1](#) gives the Secretary of State a power to make an order, after obtaining the consent of the Scottish Ministers, to provide that marriages of same sex couples solemnized under the law of England and Wales are to be treated under the law of Scotland as civil partnerships. This power could be used in the event that, when marriage of same sex couples becomes lawful in England and Wales, it is not lawful in Scotland. Without legal recognition of their status, a same sex couple who married in London, for example, and subsequently moved to Glasgow would not be recognised as being in any legal relationship.
97. The Secretary of State may also make a supplementary order to vary or undo this treatment as a civil partnership in particular circumstances. An order for treating marriages of same sex couples solemnized in England and Wales as civil partnerships cannot be made if marriage of same sex couples has become lawful in Scotland. However, an order that has been made will continue to be valid even if marriage of same sex couples becomes lawful in Scotland, though at that point the order could be revoked. This means that couples treated as civil partners during the period between this Act coming into force and any Scottish legislation coming into force would not retrospectively lose rights acquired as civil partners during that period. Any order made under the Act which would otherwise be within the legislative competence of the Scottish Parliament will be subject to the consent of Scottish Ministers.
98. [Paragraph 2](#) provides that marriages of a same sex couples solemnized under the law of England and Wales are to be treated under the law of Northern Ireland as civil partnerships. This is to deal with the situation that, though marriage of same sex couples will be lawful in England and Wales, it is not lawful in Northern Ireland. Without legal recognition of their status, a same sex couple who married in London, for example, and subsequently moved to Belfast would not be recognised as being in any legal relationship.
99. The Secretary of State may also make a supplementary order to vary or undo this treatment as a civil partnership in particular circumstances. Any order made by the Secretary of State or Lord Chancellor under the Act which would otherwise be within the legislative competence of the Northern Ireland Assembly will be subject to the consent of the Department of Finance and Personnel.

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

100. [Paragraph 4](#) provides that where a marriage of a same sex couple is treated as a civil partnership in Scotland or in Northern Ireland and the civil partnership is subsequently

*These notes refer to the Marriage (Same Sex Couples) Act 2013 (c.30) which received Royal Assent on 17 July 2013*

dissolved or annulled or an order is made for the separation of the civil partners, then the marriage itself will also automatically be ended or the parties will have a judicial separation under the law of England and Wales.

*Example*

- A same sex couple gets married in London and later moves to Edinburgh. Their relationship will be treated as a civil partnership in Scotland. If their civil partnership was subsequently dissolved by a court in Scotland, the effect of such an order will be recognised under the law of England and Wales as if the couple had divorced – their marriage will be ended. They do not have to return to England and Wales in order for this to happen.

**Part 3 – England and Wales: “overseas relationships” in Civil Partnership Act 2004**

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

*Examples*

- If a same sex couple who were married in Belgium move to England, their relationship will be treated as a marriage in England and Wales.
- If the same sex couple who married in Belgium subsequently move to Northern Ireland, their relationship will be treated as a civil partnership there, as marriage of same sex couples is not possible under Northern Ireland law and so overseas marriages of same sex couples will continue to be treated as civil partnerships in Northern Ireland under the Civil Partnership Act.