

MARRIAGE (SAME SEX COUPLES) ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Schedule 3 – Interpretation of legislation

102. [Schedule 3](#) makes further provision about interpretation of references to marriages in existing (Part 1) and new (Part 2) legislation in England and Wales, in accordance with the principle set out in section 11 that marriage in law has the same effect in relation to same sex couples as to opposite sex couples.

Part 1 – Existing England and Wales legislation

103. [Part 1](#) sets out details of how particular terms used in existing legislation in England and Wales are to be read once marriage of same couples becomes possible. The particular terms mentioned in paragraph 1 are references to a marriage, a married couple or married person in existing legislation in England and Wales; these are to be read as also referring to a marriage of a same sex couple, married same sex couples or to a person married to someone of the same sex.
104. Under paragraph 1(2), such references are also to be read across to, for example, cases where a marriage has ended. A reference to a person as a widow would be read as including a reference to a woman whose marriage to another woman ended with the other woman's death, for example.
105. [Paragraph 1\(3\)](#) ensures that existing England and Wales legislation will be interpreted in accordance with paragraphs 1(1) and (2) no matter what language it uses in making reference to any of the relevant concepts.
106. [Paragraph 2](#) particularly deals with references to couples living together as if married; these are to be read as also referring to a person who is living with someone of the same sex as if they are married.
107. [Paragraph 3](#) deals with legislation where there is existing provision which deals differently with a man and a woman living together as if married, and a same sex couple living together as if civil partners. The effect of this paragraph is to preserve the current effect for same sex couples despite the introduction of marriage of same sex couples. In other words, the current distinction is maintained by which an unmarried opposite sex couple are treated as if married, while an unmarried same sex couple not in a civil partnership are treated as if in a civil partnership.
108. [Paragraph 4](#) ensures that the terms specified in Part 1 of Schedule 3 are not the only terms whose meaning will change once marriage of same sex couples becomes possible.

Examples

- Section 105(1) of the Children Act 1989, as amended, defines the meaning of “child of the family” for the purposes of that Act:

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

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

(a) a child of both of them, and

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

The effect of paragraph 1(1)(a) of Schedule 3 means that the reference to “parties to a marriage” is to be interpreted now as including a reference to a marriage of a same sex couple.

- Section 144(4) of the Adoption and Children Act 2002 defines the meaning of “a couple” for the purposes of that Act:

“In this Act, a couple means –

(a) a married couple, or

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

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

Paragraph 1(1)(b) allows for the reference here to a married couple now to include a married same sex couple.

- Section 2(1) of the Offices, Shops and Railway Premises Act 1963 as amended states that: “This Act shall not apply to any premises to which it would, apart from this subsection, apply, if none of the persons employed to work in the premises is other than the husband, wife, civil partnerof the person by whom they are so employed.” The terms “husband” and “wife” here refer to a person who is married for the purposes of paragraph 1(1)(c) of Schedule 3. This means that “husband” here will be read as including a man or a woman in a marriage of a same sex couple, as well as a man married to a woman. In a similar way, “wife” will be read as including a woman married to another woman or a man married to a man. The result is that this section is to be read as including both male and female spouses in marriages of same sex couples.

Part 2 – New England and Wales legislation

109. **Part 2** governs how new legislation made after the passing of this Act is to be interpreted. It sets out the meanings of specific words relating to marriage (such as “husband” and “wife”). It reflects the main principle of the Act, which is to put marriage of same sex couples on an equal footing with marriage of opposite sex couples. This will ensure that gender-specific terms such as “husband” keep their gender-specific effect.

110. It should be noted that in Part 7 of Schedule 4, paragraph 27 provides a power for the Secretary of State to modify or disapply the provisions of Schedule 3 in specified circumstances.

Example

- The term “husband” will in future legislation include a man who is married to another man (but not a woman married to another woman); and “wife” will include a woman who is married to another woman (but not a man married to another man) unless specific alternative provision is made.