

MARRIAGE (SAME SEX COUPLES) ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Schedule 4 – Effect of extension of marriage: further provision

Part 3 – Divorce and annulment of marriage

114. **Paragraph 3** adds a new subsection 1(6) in the Matrimonial Causes Act 1973. Section 1 of that Act sets out various facts for proving that a marriage has broken down irretrievably (the ground for divorce), including in subsection 1(2) (a) that one of the parties to the marriage has committed adultery and the other finds it intolerable to live with that party. New subsection 1(6) maintains the existing definition of adultery and provides that only conduct between one party to the marriage and a person of the opposite sex may constitute adultery. This applies to both opposite sex and same sex couples.
115. **Paragraph 4** amends section 12 of the Matrimonial Causes Act 1973. The effect of this amendment is that non-consummation (either by reason of incapacity or wilful refusal) cannot be a ground on which a marriage of a same sex couple is voidable. The provisions for opposite sex couples remain unaltered.

Examples

- A man married to a woman has an affair with another man. His wife cannot cite adultery as a fact for divorce, but can rely on unreasonable behaviour instead.
- A man married to another man has an affair with a woman. His husband can cite adultery and that he finds it intolerable to live with his husband as a fact for divorce.
- A man married to another man refuses to have sexual intercourse with his husband. His husband cannot apply for annulment of the marriage because of his wilful refusal to consummate. However, after one year of marriage, he may apply for divorce because his husband has behaved in such a way that he cannot reasonably be expected to live with him.