

*Status: Point in time view as at 31/10/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Marriage (Same Sex Couples) Act 2013. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

Section 4

#### REGISTRATION OF BUILDINGS ETC

##### *Introduction*

1 Part 3 of the Marriage Act 1949 is amended in accordance with this Schedule.

##### **Commencement Information**

**II** Sch. 1 para. 1 in force at 31.10.2013 for specified purposes by S.I. 2013/2789, art. 2(a)

##### *Registration of buildings*

2 After section 43 insert—

##### **“43A Registration of buildings: marriage of same sex couples**

- (1) A building that has been certified as required by law as a place of religious worship may be registered under this section for the solemnization of marriages of same sex couples.
- (2) Any application for registration of a building under this section is to be made—
  - (a) by a proprietor or trustee of the building;
  - (b) to the superintendent registrar of the registration district in which the building is situated.
- (3) An application for registration of a building under this section must be accompanied by—
  - (a) a certificate, given by the applicant and dated not earlier than one month before the making of the application, that the persons who are the relevant governing authority in relation to the building have given written consent to marriages of same sex couples as mentioned in section 26A(3),
  - (b) a copy of that consent, and
  - (c) if the building is not already registered under section 41, a certificate of use for religious worship.
- (4) The superintendent registrar must send to the Registrar General—
  - (a) the certificate or certificates, and
  - (b) the copy of the consent,which accompany an application under this section.
- (5) The Registrar General must then register the building.

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- (6) A building may be registered for the solemnization of marriages under this section whether it is a separate building or forms part of another building.
- (7) In this section, in relation to an application under this section, “certificate of use for religious worship” means a certificate given by at least twenty householders and dated not earlier than one month before the making of the application, stating that they—
  - (a) use the building as their usual place of public religious worship, and
  - (b) wish the building to be registered under this section.

#### **43B Buildings registered under section 43A: appointment of authorised persons**

- (1) For the purpose of enabling marriages to be solemnized in a building registered under section 43A without the presence of a registrar, the trustees or governing body of that building may authorise a person to be present at the solemnization of marriages in that building.
- (2) Where a person is so authorised in respect of any building registered under section 43A, the trustees or governing body of that building must certify the name and address of the person so authorised to—
  - (a) the Registrar General, and
  - (b) the superintendent registrar of the registration district in which the building is situated.
- (3) The power conferred by this section may only be exercised after the end of the relevant one year period (and, if that period has ended before the date of the registration under section 43A, the power may accordingly be exercised immediately).
- (4) The relevant one year period is the period of one year beginning with the date of the registration of the building under section 43A (the “new registration”).
- (5) But if—
  - (a) there is any earlier registration of the building under section 41 which is still in force at the date of the new registration, or
  - (b) there has been any earlier qualifying registration of a previous building,
 the relevant one year period is the period of one year beginning with the date of that registration (or the earlier of those dates).
- (6) For that purpose there is a qualifying registration of a previous building if—
  - (a) the congregation on whose behalf the new registration is made previously used another building for the purpose of public religious worship,
  - (b) that building was registered under section 41 or 43A, and
  - (c) that registration was cancelled not more than one month before the date of the new registration.
- (7) A reference in this section to the solemnization of marriage is a reference to the solemnization of marriage of a same sex couple.

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- (8) Nothing in this section is to be taken to relate or have any reference to marriages solemnized according to the usages of the Society of Friends or of persons professing the Jewish religion.

#### **43C Cancellation of registration under section 43A**

- (1) The registration of a building under section 43A may be cancelled under this section.
- (2) Any application under this section is to be made—
- (a) by a proprietor or trustee of the building;
  - (b) to the superintendent registrar of the registration district in which the building is situated.
- (3) The superintendent registrar must forward any application under this section to the Registrar General; and the Registrar General must then cancel the registration of the building.
- (4) This section is subject (in particular) to sections 44A to 44C (registration of shared buildings for marriage of same sex couples) and regulations made under any of those sections.

#### **43D Regulations about sections 41 and 43 and 43A to 43C**

- (1) The Secretary of State may by statutory instrument make regulations about the procedures to be followed and the fees payable—
- (a) on registration applications;
  - (b) in relation to section 43B authorisations;
  - (c) on cancellation applications.
- (2) The Secretary of State may by statutory instrument make—
- (a) regulations modifying the application of section 41 or 43 in relation to buildings that are already registered under section 43A;
  - (b) regulations about cases where a person makes applications under sections 41 and 43A, or gives or certifies authorisations under sections 43 and 43B, in respect of the same building at the same time (including provision modifying any requirement imposed by any of those sections or by regulations under subsection (1) of this section).
- (3) A statutory instrument containing regulations made under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In this section—
- “cancellation application” means an application under section 43C for the cancellation of the registration of a building;
  - “registration application” means an application under section 43A for the registration of a building;
  - “section 43B authorisation” means the authorisation of a person under section 43B to be present at the solemnization of marriages in a building registered under section 43A.”

*Status: Point in time view as at 31/10/2013.*

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#### Commencement Information

**I2** Sch. 1 para. 2 in force at 31.10.2013 for specified purposes by S.I. 2013/2789, art. 2(a)

#### *Shared buildings*

3 After section 44 insert—

*“Registration of shared buildings for marriage of same sex couples*

#### **44A Building subject to Sharing of Church Buildings Act 1969: registration**

- (1) This section applies to a registration application relating to a building that is—
  - (a) subject to a sharing agreement, or
  - (b) used as mentioned in section 6(4) of the 1969 Act.
- (2) The registration application must be made in accordance with section 43A (as read with section 26A(3)).
- (3) But those provisions have effect subject to the following provisions of this section.
- (4) Each of the sharing churches is a relevant religious organisation for the purposes of section 26A(3).
- (5) A consent given under section 26A(3) (a “consent to marriages of same sex couples”) by the relevant governing authority of any of the sharing churches is therefore sufficient for the registration application to be made in compliance with section 26A(3) (and references to the consent of the relevant governing authority in section 43A are to be read accordingly).
- (6) But the registration application may not be made unless the relevant governing authorities of each of the sharing churches (other than those which have given consents to marriages of same sex couples) have given a separate written consent to the use of the shared building for the solemnization of marriages of same sex couples (a “consent to use”).
- (7) The registration application must also be accompanied by—
  - (a) a certificate, given by the applicant and dated not more than one month before the making of the application, that the relevant governing authorities mentioned in subsection (6) have given written consents to use, and
  - (b) copies of those consents.
- (8) The superintendent registrar must also send to the Registrar General—
  - (a) the certificate, and
  - (b) the copies of the consents,
 which accompany the application in accordance with subsection (7).
- (9) The Registrar General must not register the shared building unless and until subsection (8) and the requirements of section 43A have been complied with.

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*Status: Point in time view as at 31/10/2013.*

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- (10) The Secretary of State may by statutory instrument make regulations containing such provision supplementing this section as the Secretary of State thinks appropriate.

#### **44B Building subject to Sharing of Church Buildings Act 1969: cancellation**

- (1) This section applies to a cancellation application relating to a building that is—
- (a) subject to a sharing agreement, or
  - (b) used as mentioned in section 6(4) of the 1969 Act.
- (2) The cancellation application must be made in accordance with section 43C.
- (3) But section 43C has effect subject to the following provisions of this section.
- (4) The cancellation application may be made either—
- (a) by a proprietor or trustee of the building, or
  - (b) by the relevant governing authority of any of the sharing churches.
- (5) For that purpose, in relation to a sharing church, “relevant governing authority” means the person or persons recognised by the members of the sharing church as competent for the purpose of making an application under section 43C in the circumstances to which this section applies.
- (6) In a case where the cancellation application is made by a relevant governing authority in accordance with subsection (4)(b)—
- (a) the application must be accompanied by a certificate, given by persons making the application, that they are the relevant governing authority of one of the sharing churches; and
  - (b) the superintendent registrar must (in addition to forwarding the application in accordance with section 43C(3)) send a copy of that certificate to the Registrar General.
- (7) The Secretary of State may by statutory instrument make regulations containing such provision supplementing this section as the Secretary of State thinks appropriate.

#### **44C Other shared places of worship: registration and cancellation**

- (1) The Secretary of State may by statutory instrument make regulations about—
- (a) registration applications relating to other shared places of worship;
  - (b) cancellation applications relating to other shared places of worship;
  - (c) the sharing churches' use of other shared places of worship (in cases where those places are registered under section 43A) for the solemnization of marriages of same sex couples.
- (2) The provision that may be made under subsection (1)(a) or (b) includes provision about the procedures to be followed on registration applications or cancellation applications.
- (3) In this section “other shared place of worship” means a shared building—

*Status: Point in time view as at 31/10/2013.*

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- (a) which has been certified as required by law as a place of religious worship, but
- (b) to which sections 44A and 44B do not apply because the building is neither—
  - (i) subject to a sharing agreement, nor
  - (ii) used as mentioned in section 6(4) of the 1969 Act.

#### **44D Sections 44A to 44C: supplementary provision**

- (1) In sections 44A to 44C (and this section)—
  - “1969 Act” means the Sharing of Church Buildings Act 1969;
  - “cancellation application” means an application under section 43C for the cancellation of the registration of a building;
  - “registration application” means an application under section 43A for the registration of a building;
  - “sharing agreement” has the meaning given in section 1 of the 1969 Act;
  - “shared building” means a building that is—
    - (a) subject to a sharing agreement,
    - (b) used as mentioned in section 6(4) of the 1969 Act, or
    - (c) otherwise shared;
  - “shared building provisions” means sections 44A to 44C;
  - “sharing churches” means—
    - (a) in the case of a building subject to a sharing agreement, the churches that have made the agreement;
    - (b) in the case of a building used as mentioned in section 6(4) of the 1969 Act, the churches that so use it;
    - (c) in the case of any other shared building, the religious organisations (whether Christian or of another faith) that share it.
- (2) Regulations under any of the shared building provisions may provide for a registration application relating to a shared building to be made otherwise than by the proprietor or trustee of the building (whether or not the proprietor or trustee retains power to make such an application).
- (3) Regulations under any of the shared building provisions may make provision about any of these cases—
  - (a) the case where a building registered under section 43A becomes a shared building;
  - (b) the case where a building registered under section 43A ceases to be a shared building;
  - (c) the case where a building is registered under section 43A and there is a change in the churches which are sharing churches;
 and the provision that may be made about such a case includes provision for the modification, suspension or cancellation of the registration under section 43A.
- (4) Regulations under any of the shared building provisions may make provision about the use of shared buildings for the solemnization of—

*Status: Point in time view as at 31/10/2013.*

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- (a) marriages of same sex couples according to the usages of the Society of Friends (commonly called Quakers), and
  - (b) marriages of same sex couples professing the Jewish religion according to the usages of the Jews.
- (5) The provision that may be made about the use of shared buildings for the solemnization of such marriages includes—
- (a) provision about the giving of consent by the relevant governing authority for the purposes of a registration application or cancellation application (including provision for identifying the relevant governing authority);
  - (b) provision corresponding to, or applying, any provision of section 43B (with or without modifications).
- (6) Regulations under any of the shared buildings provisions may amend any England and Wales legislation.
- (7) Subsections (2) to (6) do not limit the power under any of the shared building provisions to make regulations.
- (8) A statutory instrument containing regulations under any of the shared building provisions may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.”.

#### Commencement Information

**I3** Sch. 1 para. 3 in force at 31.10.2013 for specified purposes by S.I. 2013/2789, art. 2(a)

## SCHEDULE 2

Section 10

### EXTRA-TERRITORIAL MATTERS

#### PART 1

##### ENGLISH AND WELSH MARRIAGES OF SAME SEX COUPLES: TREATMENT IN SCOTLAND AND NORTHERN IRELAND

###### *Scotland*

- 1 (1) The Secretary of State may, by order, provide that, under the law of Scotland, a marriage of a same sex couple under the law of England and Wales is to be treated as a civil partnership formed under the law of England and Wales (and that, accordingly, the spouses are to be treated as civil partners).
- (2) The Secretary of State may by order—
- (a) provide for the treatment of a marriage as a civil partnership (by virtue of an order under sub-paragraph (1)) to have effect subject to provision made by the order;
  - (b) specify cases in which a marriage is not to be treated as a civil partnership by virtue of an order under sub-paragraph (1).

*Status: Point in time view as at 31/10/2013.*

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- (3) The power conferred by sub-paragraph (1) may only be exercised if marriage of same sex couples is not lawful under the law of Scotland.
- (4) If marriage of same sex couples becomes lawful under the law of Scotland, that does not—
- (a) affect the validity of any order made under this paragraph; or
  - (b) prevent the revocation of any such order (with or without transitional, transitory or saving provision being made) using the powers conferred by this paragraph.

**Commencement Information**

**I4** Sch. 2 para. 1 in force at 31.10.2013 by S.I. 2013/2789, art. 3(d)

*Northern Ireland*

- 2 (1) Under the law of Northern Ireland, a marriage of a same sex couple under the law of England and Wales is to be treated as a civil partnership formed under the law of England and Wales (and accordingly, the spouses are to be treated as civil partners).
- (2) The Secretary of State may by order—
- (a) provide for the treatment of a marriage as a civil partnership (by virtue of sub-paragraph (1)) to have effect subject to provision made by the order;
  - (b) specify cases in which a marriage is not to be treated as a civil partnership by virtue of sub-paragraph (1).

**Commencement Information**

**I5** Sch. 2 para. 2(2) in force at 31.10.2013 by S.I. 2013/2789, art. 3(d)

VALID FROM 13/03/2014

*Contrary provision*

- 3 (1) The treatment of a marriage as a civil partnership by virtue of an order under paragraph 1(1), or by virtue of paragraph 2, is subject to—
- (a) any order made under paragraph 1(2) or 2(2), and
  - (b) any other contrary provision made by—
    - (i) the other provisions of this Act,
    - (ii) any other subordinate legislation made under this Act, and
    - (iii) any new UK legislation,
 including any such contrary provision contained in amendments of existing UK legislation.
- (2) In this paragraph—  
 “existing UK legislation” means—



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- (a) in the case of UK legislation that is primary legislation, legislation passed before the end of the Session in which this Act is passed (excluding this Act), or
  - (b) in the case of UK legislation that is subordinate legislation, legislation made on or before the day on which this Act is passed (excluding legislation made under this Act);
- “new UK legislation” means—
- (a) in the case of UK legislation that is primary legislation, legislation passed after the end of the Session in which this Act is passed, or
  - (b) in the case of UK legislation that is subordinate legislation, legislation made after the day on which this Act is passed.

VALID FROM 13/03/2014

## PART 2

### MARRIAGE TREATED AS CIVIL PARTNERSHIP: DISSOLUTION, ANNULMENT OR SEPARATION

#### *Order made in relation to civil partnership: validity in relation to marriage*

- 4 (1) This paragraph applies in a case where a marriage of a same sex couple under the law of England and Wales is—
- (a) by virtue of an order under paragraph 1, treated under the law of Scotland as a civil partnership, or
  - (b) by virtue of paragraph 2, treated under the law of Northern Ireland as a civil partnership.
- (2) 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 actual marriage that it has in relation to the deemed civil partnership.
- (3) 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 actual 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).
- (4) In this paragraph—
- “actual marriage” means the marriage of the same sex couple under the law of England and Wales;
  - “deemed civil partnership” means the civil partnership which the actual marriage is treated as being;
  - “final order” means—

*Status: Point in time view as at 31/10/2013.*

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- (a) the dissolution or annulment of a civil partnership obtained from a court of civil jurisdiction in any part of the United Kingdom;
  - (b) an overseas dissolution or annulment;
- “relevant couple” means the same sex couple who are parties to the actual marriage;
- “separation order” means—
- (a) a legal separation of the parties to a civil partnership obtained from a court of civil jurisdiction in any part of the United Kingdom;
  - (b) an overseas legal separation of the parties to a civil partnership.

PROSPECTIVE

### PART 3

ENGLAND AND WALES: “OVERSEAS RELATIONSHIPS” IN CIVIL PARTNERSHIP ACT 2004

*Marriage not an “overseas relationship” in England and Wales*

- 5 (1) The Civil Partnership Act 2004 is amended as follows.
- (2) Section 213 (specified relationships): after subsection (1) insert—
- “(1A) But, for the purposes of the application of this Act to England and Wales, marriage is not an overseas relationship.”.

VALID FROM 13/03/2014

### SCHEDULE 3

Section 11

#### INTERPRETATION OF LEGISLATION

### PART 1

#### EXISTING ENGLAND AND WALES LEGISLATION

*Interpretation of existing England and Wales legislation*

- 1 (1) In existing England and Wales 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; and
  - (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.

*Status: Point in time view as at 31/10/2013.*

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- (2) Where sub-paragraph (1) 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.
- (3) For the purposes of sub-paragraphs (1) and (2) it does not matter how a reference is expressed.

*Interpretation of legislation about couples living together as if married*

- 2 (1) In existing England and Wales legislation—
- (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.
- (2) Where sub-paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to persons formerly living together as a married couple) is to be read accordingly.
- (3) For the purposes of sub-paragraphs (1) and (2) it does not matter how a reference is expressed.
- 3 (1) This paragraph applies to existing England and Wales 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.
- (2) 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.

*General*

- 4 This Part of this Schedule does not limit section 11(1) or (2).

**PART 2**

NEW ENGLAND AND WALES LEGISLATION

- 5 (1) This paragraph applies to provision made by—
- (a) this Act and any subordinate legislation made under it, or
  - (b) new England and Wales legislation,
- including any such provision which amends existing England and Wales 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;

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- (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, and
  - (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 Part of this Schedule does not limit section 11(1) or (2).

## SCHEDULE 4

Section 11

### EFFECT OF EXTENSION OF MARRIAGE: FURTHER PROVISION

VALID FROM 13/03/2014

#### PART 1

##### PRIVATE LEGAL INSTRUMENTS

###### *Existing instruments*

- 1 (1) Section 11 does not alter the effect of any private legal instrument made before that section comes into force.
- (2) In this paragraph “private legal instrument” includes—
- (a) a will,
  - (b) an instrument (including a private Act) which settles property,
  - (c) an instrument (including a private Act) which provides for the use, disposal or devolution of property, and
  - (d) an instrument (including a private Act) which—
    - (i) establishes a body, or
    - (ii) regulates the purposes and administration of a body,
(whether the body is incorporated or not and whether it is charitable or not); but (with the exception of the kinds of private Act mentioned above) it does not include England and Wales legislation.

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VALID FROM 13/03/2014

## PART 2

### PRESUMPTION ON BIRTH OF CHILD TO MARRIED WOMAN

#### *Common law presumption*

- 2
- (1) Section 11 does not extend the common law presumption that a child born to a woman during her marriage is also the child of her husband.
  - (2) Accordingly, where a child is born to a woman during her marriage to another woman, that presumption is of no relevance to the question of who the child's parents are.

VALID FROM 13/03/2014

## PART 3

### DIVORCE AND ANNULMENT OF MARRIAGE

#### *Divorce*

- 3
- (1) Section 1 of the Matrimonial Causes Act 1973 (divorce on breakdown of marriage) is amended as follows.
  - (2) After subsection (5) insert—
    - “(6) Only conduct between the respondent and a person of the opposite sex may constitute adultery for the purposes of this section.”.

#### *Annulment of marriage*

- 4
- (1) Section 12 of the Matrimonial Causes Act 1973 (grounds on which a marriage is voidable) is amended as follows.
  - (2) The existing provision of section 12 becomes subsection (1) of that section.
  - (3) After that subsection (1) insert—
    - “(2) Paragraphs (a) and (b) of subsection (1) do not apply to the marriage of a same sex couple.”.

*Status: Point in time view as at 31/10/2013.*

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## PART 4

### MATRIMONIAL PROCEEDINGS

#### *Amendment of the Domicile and Matrimonial Proceedings Act 1973*

5 The Domicile and Matrimonial Proceedings Act 1973 is amended as follows.

#### **Commencement Information**

**I6** Sch. 4 para. 5 in force at 31.10.2013 for specified purposes by S.I. 2013/2789, art. 2(b)

VALID FROM 13/03/2014

- 6 (1) Section 5 (jurisdiction of High Court and county courts) is amended in accordance with this paragraph.
- (2) Subsection (1): after “entertain” insert “ any of the following proceedings in relation to a marriage of a man and a woman ”.
- (3) After subsection (5) insert—
- “(5A) Schedule A1 (jurisdiction in relation to marriage of same sex couples) has effect.”.
- (4) Subsection (6): after “Wales” insert “ (whether the proceedings are in respect of the marriage of a man and a woman or the marriage of a same sex couple) ”.

VALID FROM 13/03/2014

- 7 Section 6 (miscellaneous amendments, transitional provision and savings), subsection (3): after “Act” (in the first place) insert “ , or by virtue of Schedule A1 to this Act, ”.

8 Before Schedule 1 insert—

“SCHEDULE A1 JURISDICTION IN RELATION TO MARRIAGE OF SAME SEX COUPLES

#### **Introduction**

- 1 This Schedule shall have effect, subject to section 6(3) and (4), with respect to the jurisdiction of the court to entertain any of the following proceedings in relation to a marriage of a same sex couple—
- (a) proceedings for divorce, judicial separation or nullity of marriage;
  - (b) proceedings for an order which ends a marriage on the ground that one of the couple is dead; and
  - (c) proceedings for a declaration of validity.

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*Status: Point in time view as at 31/10/2013.*

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### **Divorce, judicial separation or annulment**

- 2 (1) The court has jurisdiction to entertain proceedings for divorce or judicial separation if (and only if)—
- (a) the court has jurisdiction under regulations under paragraph 5,
  - (b) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5 and either of the married same sex couple is domiciled in England and Wales on the date when the proceedings are begun, or
  - (c) the following conditions are met—
    - (i) the two people concerned married each other under the law of England and Wales,
    - (ii) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5, and
    - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.
- (2) The court has jurisdiction to entertain proceedings for nullity of marriage if (and only if)—
- (a) the court has jurisdiction under regulations under paragraph 5,
  - (b) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5 and either of the married same sex couple—
    - (i) is domiciled in England and Wales on the date when the proceedings are begun, or
    - (ii) died before that date and either was at death domiciled in England and Wales or had been habitually resident in England and Wales throughout the period of 1 year ending with the date of death, or
  - (c) the following conditions are met—
    - (i) the two people concerned married each other under the law of England and Wales,
    - (ii) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5, and
    - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.
- (3) At any time when proceedings are pending in respect of which the court has jurisdiction by virtue of sub-paragraph (1) or (2) (or this sub-paragraph), the court also has jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, even though that jurisdiction would not be exercisable under subsection (1) or (2).

### **Presumption of death order**

- 3 The court has jurisdiction to entertain proceedings for an order which ends a marriage on the ground that one of the couple is dead on an application made by the other of the couple (“the applicant”) if (and only if)—
- (a) at the time the application is made, the High Court does not have jurisdiction to entertain an application by the applicant under

*Status: Point in time view as at 31/10/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Marriage (Same Sex Couples) Act 2013. (See end of Document for details)*

section 1 of the Presumption of Death Act 2013 for a declaration that the applicant's spouse is presumed to be dead, and

- (b) the two people concerned married each other under the law of England and Wales and it appears to the court to be in the interests of justice to assume jurisdiction in the case.

#### **Declaration of validity**

- 4 The court has jurisdiction to entertain an application for a declaration of validity if (and only if)—
  - (a) either of the parties to the marriage to which the application relates—
    - (i) is domiciled in England and Wales on the date of the application,
    - (ii) has been habitually resident in England and Wales throughout the period of 1 year ending with that date, or
    - (iii) died before that date and either was at death domiciled in England and Wales or had been habitually resident in England and Wales throughout the period of 1 year ending with the date of death, or
  - (b) the two people concerned married each other under the law of England and Wales and it appears to the court to be in the interests of justice to assume jurisdiction in the case.

#### **Power to make provision corresponding to EC Regulation 2201/2003**

- 5 (1) The Lord Chancellor may by regulations make provision—
  - (a) as to the jurisdiction of courts in England and Wales in proceedings for the divorce of, or annulment of the marriage of, a same sex couple or for judicial separation of a married same sex couple where one of the couple—
    - (i) is or has been habitually resident in a member State,
    - (ii) is a national of a member State, or
    - (iii) is domiciled in a part of the United Kingdom or the Republic of Ireland, and
  - (b) as to the recognition in England and Wales of any judgment of a court of another member State which orders the divorce of, or annulment of a marriage of, a same sex couple or the judicial separation of a married same sex couple.
- (2) The regulations may in particular make provision corresponding to that made by Council Regulation (EC) No 2201/2003 of 27th November 2003 in relation to jurisdiction and the recognition and enforcement of judgments in matrimonial matters.
- (3) The regulations may provide that for the purposes of the regulations “member State” means—
  - (a) all member States with the exception of such member States as are specified in the regulations, or
  - (b) such member States as are specified in the regulations.



*Status: Point in time view as at 31/10/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Marriage (Same Sex Couples) Act 2013. (See end of Document for details)*

- (4) The regulations may make provision under sub-paragraph (1)(b) which applies even if the date of the divorce, annulment or judicial separation is earlier than the date on which this paragraph comes into force.
- (5) Regulations under this paragraph are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under this paragraph may not be made unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by resolution of, each House of Parliament.

### Interpretation

- 6 In this Schedule “declaration of validity” means—
- (a) a declaration as to the validity of a marriage,
  - (b) a declaration as to the subsistence of a marriage, or
  - (c) a declaration as to the validity of a divorce, annulment or judicial separation obtained outside England and Wales in respect of a marriage.”.

#### Commencement Information

**17** Sch. 4 para. 8 in force at 31.10.2013 for specified purposes by S.I. 2013/2789, art. 2(b)

VALID FROM 13/03/2014

- 9 Schedule 1 (staying of matrimonial proceedings in England and Wales: interpretation), paragraph 2: after “kinds” insert “ (whether relating to a marriage of a man and a woman or a marriage of a same sex couple) ”.

VALID FROM 13/03/2014

#### *Transitory provision until commencement of Presumption of Death Act 2013*

- 10 (1) This paragraph applies if section 1 of the Presumption of Death Act 2013 has not come into force at the time when the amendments of the Domicile and Matrimonial Proceedings Act 1973 made by the other provisions of this Part of this Schedule come into force.
- (2) Schedule A1 to the Domicile and Matrimonial Proceedings Act 1973 has effect with the following modifications until section 1 of the Presumption of Death Act 2013 comes into force.
- (3) Paragraph 1 has effect with the following provision substituted for paragraph (b)—
- “(b) proceedings for death to be presumed and a marriage to be dissolved in pursuance of section 19 of the Matrimonial Causes Act 1973; and”.
- (4) Schedule A1 has effect with the following provision substituted for paragraph 3—

*Status: Point in time view as at 31/10/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Marriage (Same Sex Couples) Act 2013. (See end of Document for details)*

- “3 The court has jurisdiction to entertain proceedings for death to be presumed and a marriage to be dissolved if (and only if)—
- (a) the applicant is domiciled in England and Wales on the date when the proceedings are begun,
  - (b) the applicant was habitually resident in England and Wales throughout the period of 1 year ending with that date, or
  - (c) the two people concerned married each other under the law of England and Wales and it appears to the court to be in the interests of justice to assume jurisdiction in the case.”.

## PART 5

### STATE PENSIONS

VALID FROM 13/03/2014

#### *Category B retirement pension for married person*

- 11 (1) Section 48A of the 1992 Act (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 Gender Recognition Act 2004, and
  - (b) the marriage subsisted before the time when that certificate was issued.
- (3) In section 48A of the 1992 Act—
- (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

*Status: Point in time view as at 31/10/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Marriage (Same Sex Couples) Act 2013. (See end of Document for details)*

(b) the marriage subsisted before the time when that certificate was issued.”

(4) In paragraph 5A of Schedule 3 to the 1992 Act, at the end of sub-paragraph (1)(b) insert “ or in a case of the kind mentioned in subsection (2ZA)(d) of that section ”.

(5) In this paragraph “the 1992 Act” means the Social Security Contributions and Benefits Act 1992.

VALID FROM 13/03/2014

*Category B retirement pension for widows and widowers*

12 (1) Section 48B of the 1992 Act (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 Gender Recognition Act 2004, and

(b) the marriage subsisted before the time when that certificate was issued.

(3) In section 48B of the 1992 Act—

(a) in subsection (1ZA), in paragraph (a)(ii) after “date” (in the second place where it appears) insert “ and the case does not fall within paragraph (c) ”;

(b) in subsection (1ZA), 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.”;

(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.”

(4) In paragraph 5A of Schedule 3 to the 1992 Act, at the end of sub-paragraph (1)(c) insert “ or in a case of the kind mentioned in subsection (1ZA)(c) of that section ”.

*Status: Point in time view as at 31/10/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Marriage (Same Sex Couples) Act 2013. (See end of Document for details)*

(5) In this paragraph “the 1992 Act” means the Social Security Contributions and Benefits Act 1992.

VALID FROM 13/03/2014

*Category B retirement pension for widowers*

- 13 (1) Section 51 of the 1992 Act (Category B retirement pension for widowers) is amended in accordance with sub-paragraphs (2) to (4).
- (2) 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.”.
- (3) Subsection (2): after “wife” insert “, husband ”.
- (4) Subsection (3): after “2002” insert “, surviving party to a same sex marriage ”.
- (5) Section 51(1ZA) of the 1992 Act 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.
- (6) 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 Gender Recognition Act 2004, and
- (b) the marriage subsisted before the time when that certificate was issued.
- (7) In this paragraph “the 1992 Act” means the Social Security Contributions and Benefits Act 1992.

*Graduated retirement benefit*

- 14 (1) Section 62 of the Social Security Contributions and Benefits Act 1992 (graduated retirement benefit) is amended as follows.
- (2) 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,

*Status: Point in time view as at 31/10/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Marriage (Same Sex Couples) Act 2013. (See end of Document for details)*

- 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
  - (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;”.
- (3) 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.”

#### Commencement Information

**18** Sch. 4 para. 14 in force at 31.10.2013 for specified purposes by S.I. 2013/2789, art. 2(b)

VALID FROM 10/12/2014

#### *Adult dependency increases*

- 15 (1) In a case where a full gender recognition certificate is issued to a person under the Gender Recognition Act 2004—
- (a) section 83 of the 1992 Act (pension increase (wife)) does not cease to apply by virtue of the change of gender; and
  - (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 Gender Recognition Act 2004—
- (a) section 84 of the 1992 Act (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.

*Status: Point in time view as at 31/10/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Marriage (Same Sex Couples) Act 2013. (See end of Document for details)*

- (3) In this paragraph “the 1992 Act” means the Social Security Contributions and Benefits Act 1992.

VALID FROM 10/12/2014

*Converted civil partnerships*

- 16 (1) This paragraph applies where a civil partnership is converted into a marriage under section 9.
- (2) For the purposes of section 48A of, and paragraph 5A(1)(b) of Schedule 3 to, the Social Security Contributions and Benefits Act 1992—
- (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 paragraph “conversion day” means the day when the civil partnership is converted into a marriage.

VALID FROM 13/03/2014

**PART 6**

OCCUPATIONAL PENSIONS AND SURVIVOR BENEFITS

*Benefits dependent on marriage of same sex couples*

- 17 (1) Paragraph 18 of Schedule 9 to the Equality Act 2010 (work: exceptions) is amended as follows.
- (2) Sub-paragraph (1): for “married” substitute “ within sub-paragraph (1A) ”.
- (3) After sub-paragraph (1) insert—
- “(1A) A person is within this sub-paragraph if the person is—
- (a) a man who is married to a woman, or
  - (b) a woman who is married to a man, or
  - (c) married to a person of the same sex in a relevant gender change case.
- (1B) The reference in sub-paragraph (1A)(c) to a relevant gender change case is a reference to a case where—
- (a) the married couple were of the opposite sex at the time of their marriage, and
  - (b) a full gender recognition certificate has been issued to one of the couple under the Gender Recognition Act 2004.”.

*Status: Point in time view as at 31/10/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Marriage (Same Sex Couples) Act 2013. (See end of Document for details)*

*Pension Schemes Act 1993*

- 18 The Pension Schemes Act 1993 is amended in accordance with paragraphs 19 to 26.
- 19 In section 8(2) (meaning of certain terms), in the definition of “guaranteed minimum pension”, after “widower's” insert “, surviving same sex spouse's”.
- 20 (1) Section 17 (minimum pensions for widows and widowers) is amended as follows.
- (2) Subsection (2)—
- (a) paragraph (a): after “man” insert “, or a woman in a relevant gender change case,”;
- (b) 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.”.
- (3) Subsection (4): after “partner's” insert “or surviving same sex spouse's”.
- (4) Subsection (5): at the beginning insert “ In the case of a woman who is the widow of a man, ”.
- (5) Subsection (6)—
- (a) at the beginning insert “ In any other case, ”;
- (b) after “widower's” insert “, widow's”.
- (6) After subsection (9) insert—
- “(10) 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.
- (11) This section is subject to regulations under section 38A.”.
- 21 (1) Section 24D (survivors' benefits) is amended as follows.
- (2) 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 ”.
- (3) Subsection (3)—
- (a) 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 ”;
- (b) after “widower” insert “, widow ”.



*Status: Point in time view as at 31/10/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Marriage (Same Sex Couples) Act 2013. (See end of Document for details)*

(4) 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—

- (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) This section is subject to regulations under section 38A.”.

22 (1) Section 37 (alteration of rules of contracted-out schemes) is amended as follows.

(2) 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.

(7) This section is subject to regulations under section 38A.”.

VALID FROM 30/06/2014

23 Before section 39 insert—

**Regulations about relevant gender change cases**

“38A(1) The Secretary of State may, by regulations, make provision for—

- (a) section 17,
- (b) section 24D, or
- (c) section 37,

to have its special effect in relevant gender change cases only if conditions prescribed in the regulations are met.



*Status: Point in time view as at 31/10/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Marriage (Same Sex Couples) Act 2013. (See end of Document for details)*

- (2) Regulations under subsection (1) may, in particular, prescribe conditions that relate to the provision of information by—
  - (a) one or both of the members of married same sex couples, or
  - (b) the survivors of such couples.
- (3) The Secretary of State may, by regulations, make further provision about cases where (because of regulations under subsection (1))—
  - (a) section 17,
  - (b) section 24D, or
  - (c) section 37,does not have its special effect in relevant gender change cases.
- (4) Regulations under subsection (3) may, in particular, provide for the section in question to have its ordinary effect in relevant gender change cases.
- (5) Regulations under subsection (1) or (3) may, in particular, modify or disapply any enactment that concerns information relating to—
  - (a) the gender or sex of a person, or
  - (b) the change of gender or sex of a person,including any enactment that concerns requests for, or disclosure of, such information.
- (6) In this section, in relation to section 17, 24D or 37—
  - (a) “relevant gender change case” has the same meaning as in that section;
  - (b) “special effect” means the effect which the section has (if regulations under subsection (1) of this section are ignored) in relation to relevant gender change cases, insofar as that effect is different from the section's ordinary effect;
  - (c) “ordinary effect” means the effect which the section has in relation to same sex married couples in cases that are not relevant gender change cases.”.

- 24 In section 47 (further provisions about effect of entitlement to guaranteed minimum pension on payment of social security benefits), in subsection (1) after “widower” insert “, surviving same sex spouse”.
- 25 In section 84 (basis of revaluation), in subsection (5), after “widower” insert “, surviving same sex spouse”.
- 26 In Schedule 3 (methods of revaluing accrued pension benefits), in paragraph 1(1E)(b), after “widower” insert “, surviving same sex spouse”.

## PART 7

### PROVISIONS WHICH LIMIT EQUIVALENCE OF ALL MARRIAGES ETC

#### *Contrary provision*

- 27 (1) The relevant enactments are subject to—

*Status: Point in time view as at 31/10/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Marriage (Same Sex Couples) Act 2013. (See end of Document for details)*

- (a) the preceding provisions of this Schedule, and
  - (b) any order under sub-paragraph (3).
- (2) The relevant enactments are subject to any other contrary provision made by—
- (a) the other provisions of this Act,
  - (b) any other subordinate legislation made under this Act, and
  - (c) any new England and Wales legislation,
- including any such contrary provision contained in amendments of existing England and Wales legislation.
- (3) The Secretary of State may by order—
- (a) provide that a relevant enactment has effect subject to provision made by the order, or
  - (b) specify cases in which a relevant enactment does not apply.
- (4) In this paragraph “relevant enactment” means—
- (a) section 11(1) and (2) and Schedule 3 (equivalence of all marriages in law), or
  - (b) section 9(6)(b) (marriage arising from conversion of civil partnership treated as having subsisted from formation of civil partnership).

**Commencement Information**

**19** Sch. 4 para. 27(3)(4) in force at 31.10.2013 by S.I. 2013/2789, art. 3(e)

VALID FROM 30/06/2014

SCHEDULE 5

Section 12

CHANGE OF GENDER OF MARRIED PERSONS OR CIVIL PARTNERS

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VALID FROM 21/01/2014

SCHEDULE 6

Section 13

MARRIAGE OVERSEAS

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*Status: Point in time view as at 31/10/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Marriage (Same Sex Couples) Act 2013. (See end of Document for details)*

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VALID FROM 13/03/2014

SCHEDULE 7

Section 17

TRANSITIONAL AND CONSEQUENTIAL PROVISION ETC

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**Status:**

Point in time view as at 31/10/2013.

**Changes to legislation:**

There are currently no known outstanding effects for the Marriage (Same Sex Couples) Act 2013.