
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to subordinate legislation as a consequence of the coming into force of the majority of the provisions of the Marriage (Same Sex Couples) Act 2013 (c. 30) (“the Act”). The Order also makes consequential amendments to subordinate legislation which should have been made as part of the implementation of the Civil Partnership Act 2004 (c. 33). The Order corrects these omissions. The Order comes into force on 13th March 2014. A separate Order (the Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014) making consequential amendments to primary legislation, as well as other provision, is also coming into force on the same day as this Order.

Schedule 1 makes amendments to subordinate legislation. Apart from the amendments made by paragraphs 18(2)(b) and (3)(b) and 19, the amendments only extend to England and Wales. The amendments made by the above mentioned paragraphs also extend to Scotland. Schedule 2 makes amendments to secondary legislation applying in Wales only.

Paragraph 1 of Schedule 1 amends article 20 of the London Cab Order 1934 (S.I. 1934/1346) to ensure that it applies as appropriate to all surviving spouses. Due to the statutory gloss contained in section 11(1) and (2) of, and Schedule 3 to, the Act, any reference to a married person in legislation is to be read as including a reference to someone married to a person of the same sex but does not affect gender-specific drafting applying to opposite sex couples. Paragraph 1(c) omits the provision in article 20 enabling a married woman to transfer her Hackney Carriage Licence to her husband.

Paragraph 2 makes a consequential amendment to the Marriage (Authorised Persons) Regulations 1952 (S.I. 1952/1869) to recognise that marriages can now take place between two people of the same sex. Other enactments concerned with registration are amended by paragraphs 7, 8, 11, 27 and 38. These are updated to recognise that same sex couples may now marry and to recognise that the parents of a child who are both of the same sex may now be married or in a civil partnership. The amendment made by paragraph 8(2) and (3) follows on from amendments made in the Act.

Paragraph 3 amends the Probation (Compensation) Regulations 1965 (S.I. 1965/620) to ensure it applies as appropriate to all surviving spouses. Similar amendments are made in paragraphs 4, 12, 13, 47(4), 49(4) and 51(4). Some legislative provisions reflect the historical position up to now that only opposite sex couples can marry. The amendments made by paragraphs 6, 9, 10, 14 to 16, 17(2), (3), (5)(e)(ii), (f)(iii), (g) and (h), and (7)(b) and (c), 20 to 24, 26, 28 to 33, 35 to 37, 40 to 43, 45, 47(2) and (3), 48(3) to (5), 49(2) and (3), 50(3) to (5), 51(2) and (3), 52(3) to (5), and 53 to 55 amend various provisions so that it is clear on the face of those enactments that same sex couples can marry or, if they are living together, can now be treated as if they are married.

Various provisions which refer to cohabiting couples who have chosen not to marry or enter into a civil partnership are amended. These amendments are found in paragraphs 34, 39, 46, 48(2), 50(2) and 52(2).

The amendments at paragraphs 5, 19 and 25 insert references to civil partners into the Merchant Shipping (Maintenance of Seamen’s Dependents) Regulations 1972 (S.I. 1972/1635), the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715) and the Working Time Regulations 1998 (S.I. 1998/1833). References to civil partners are also inserted by paragraphs 3, 4, 12, 13, 18(2)(b) and (3)(b), 47(4), 49(4), 51(4) and 56.

The Act provides that in certain cases same sex married couples are not to be treated in exactly the same way as opposite sex married couples. The amendments made by paragraphs 17(4), (5)(a) to

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(d), (e)(i), and (f)(i) and (ii), (6) and (7)(a), and 18(2)(a) and (3)(a) have this effect. Paragraph 44 ensures provision about same sex married couples is made in the Occupational Pension Schemes (Modification of Schemes) Regulations 2006 (S.I. 2006/759). Paragraph 56 makes amendments to ensure that increases in the annual rate of the pensions of survivors of same sex spouses in public service pension schemes are correctly calculated.

Schedule 2 makes similar amendments to statutory instruments which only apply to Wales. These make amendments to provisions referring to persons living together to reflect the fact that same sex couples can now marry, and the amendment made by paragraph 7 also inserts a reference to civil partners in article 2 of the Selective Licensing of Houses (Specified Exemptions) (Wales) Order 2006 (S.I. 2006/2824 (W. 247)).

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.