

**EXPLANATORY MEMORANDUM TO
THE OVERSEAS MARRIAGE (ARMED FORCES) ORDER 2014**

2014 No. 1108

1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this draft Order is to make provision for members of the UK armed forces serving overseas, and relevant civilians¹, to marry in the presence of an authorised person. This includes marriage of both opposite and same sex couples.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Marriage (Same Sex Couples) Act 2013 received Royal Assent on 17th July 2013. This is one of a number of Orders and Regulations which are being laid before Parliament at the same time and which are necessary for implementation of the majority of the Act. They include, briefly, statutory instruments:

- making consequential and other amendments to primary and secondary legislation in England and Wales²;
- setting out procedures for registration of shared religious buildings for the solemnization of marriages of same sex couples³;
- setting out provisions on jurisdiction in the event of divorce or annulment of a marriage of a same sex couple⁴;

¹ Relevant civilians are defined as civilians who are subject to service discipline (within the meaning of the Armed Forces Act 2006) and a dependent of either a member of the armed forces or civilian subject to service discipline.

² The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014, and the Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order 2014

³ The Marriage of Same Sex Couples (Registration of Shared Buildings) Regulations 2014

⁴ The Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgements) Regulations 2014

- allowing separate registration of religious buildings and appointment of authorised persons for marriage of same sex couples⁵;
- setting out procedures for registration of military chapels for marriage of same sex couples in England and Wales⁶;
- setting out procedures for marriages in overseas consulates⁷;
- providing for graduated retirement benefit to be inheritable by a surviving same sex spouse⁸;
- making changes to particular public service pension schemes to provide survivor benefits for married same sex couples on the same basis as civil partners⁹.

4.2 This Order is made under Part 3 (Marriage of forces personnel under UK law) of Schedule 6 (Marriage overseas) of the Marriage (Same Sex Couples) Act 2013. Schedule 6 is given effect by Section 13 of that Act. Section 13 also repeals (except for Northern Ireland) the Foreign Marriage Act 1892.

4.3 The Foreign Marriage (Armed Forces) Order 1964, made under section 22 of the Foreign Marriage Act 1892, currently enables armed forces' personnel and accompanying civilians serving overseas to marry in the presence of an armed forces' chaplain or authorised officer. Section 22 provides that such a marriage is valid as if it had been solemnized in the United Kingdom. Marriage of same sex couples is not yet possible in Scotland and there are no plans to introduce it in Northern Ireland. In order therefore for the statutory regime for the marriage of armed forces personnel overseas to include marriages of same sex couples, it is necessary to make this Order, which effectively replaces the current regime with one that requires the nomination of the part of the UK in which the marriage is to be registered.

5. Territorial Extent and Application

5.1 This Order extends to England and Wales and Scotland. It does not extend to Northern Ireland.

⁵ The Marriage of Same Sex Couples (Registration of Buildings and Appointment of Authorised Persons) Regulations 2014

⁶ The Marriage of Same Sex Couples (Use of Armed Forces' Chapels) Regulations 2014

⁷ The Consular Marriages and Marriages under Foreign Law Order 2014

⁸ The Social Security (Graduated Retirement Benefit)(Married Same Sex Couples) Regulations 2014

⁹ The National Health Service Pension Scheme, Additional Voluntary Contributions, Compensation for Premature Retirement and Injury Benefits (Amendment) Regulations 2014, and the Police Pensions (Amendment) Regulations 2014

5.2 The Foreign Marriage Act 1892 and the Foreign Marriage (Armed Forces) Order 1964 made under it will remain in place for opposite sex couples who nominate Northern Ireland as the part of the UK in which they would otherwise have been eligible to be married.

6. European Convention on Human Rights

Anna Soubry Minister for Defence Personnel, Welfare and Veterans at the Ministry of Defence has made the following statement regarding Human Rights:

In my view the provisions of the Overseas Marriage (Armed Forces) Order 2014 are compatible with the Convention rights.

7. Policy background

7.1 Provision for marriage of same sex couples should be available to armed forces personnel who would wish to enter into such an arrangement at home or overseas to reflect the mobile circumstances of armed forces personnel.

7.2 The marriage of service personnel (opposite sex couples) overseas is currently governed by an Order in Council (the Foreign Marriage (Armed Forces) Order 1964) made under section 22 of the Foreign Marriage Act 1892. Marriage of same sex couples could not be included within those provisions as they currently extend to the whole United Kingdom and do not enable a marriage to be attributed to a particular part of the UK.

7.3 Part 3 of Schedule 6 to the Marriage (Same Sex Couples) Act 2013 includes provision for this Order to cover marriages of both armed forces opposite sex couples and same sex couples in countries or territories overseas. Marriage of same sex couples under the Order can only take place in those countries or territories which have notified the Secretary of State in writing that there is no objection to such marriages taking place (and not revoked such notice). As in the case of consular marriages, it will be necessary to identify a particular part of the UK in which the marriage is to be registered, which must be a part of the UK in which they would otherwise have been eligible to be married. A same sex couple will not be able to nominate Northern Ireland and will be able to nominate Scotland once the Scottish Parliament has adopted its own legislation to allow for marriage of same sex couples. There has been no material change in policy for marriage of opposite sex couples overseas.

7.4 In addition, this Order reflects the provision in Part 3 of Schedule 6 of the Marriage (Same Sex Couples) Act 2013 that the marriage of a same sex couple may only be solemnized according to the rites or usages of a relevant religious organisation where the relevant governing authority has given written consent and an authorised chaplain has agreed to solemnize the marriage according to those rites. This will specifically preclude marriages of same sex couples according to the rites of the Church of England and Church in Wales.

8. Consultation outcome

8.1 No specific consultation has been undertaken in respect of this Order. However, the Government carried out a consultation on equal marriage prior to the introduction of the Act which ran for 13 weeks and closed on 14 June 2012. There were over 228,000 responses, of which 53% were in favour of the proposals, and a number of large petitions which were opposed to the proposals. This was followed by the publication of the Government response “Equal marriage: The Government’s response”. Both the consultation and response documents are available at <https://www.gov.uk/government/consultations/equal-marriage-consultation>.

9. Guidance

9.1 No guidance has been prepared specifically for this Order. Relevant guidance will be produced for armed forces personnel ahead of the implementation of the Order in June 2014.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this Order as no cost on business is foreseen, but an impact assessment was published alongside the Act and is available through the DCMS website: <https://www.gov.uk/government/publications/marriage-same-sex-couples-bill>.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The operation of the Act under which this Order falls will be subject to review after 5 years.

13. Contact

Tracy Sexton at the Ministry of Defence Tel: 0207 2180564 or email: CLS-Sec1@mod.uk can answer any queries regarding the instrument.