EXPLANATORY MEMORANDUM

THE CONSULAR MARRIAGES AND MARRIAGES UNDER FOREIGN LAW (No. 2) ORDER 2014

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by The Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the Order is to revoke and re-enact (with some additional and consequential amendments) the Consular Marriages and Marriages under Foreign Law Order 2014 (S.I. 2014/1110) ("the original order").

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

3.1 The original order as made by the Privy Council contained two articles (17 and 18) which were not in the draft version of the original order as laid before Parliament. These articles were included in error in the version of the original Order which was submitted to the Privy Council. The two articles contained a consequential amendment which updated references to marriage legislation and revocations of secondary legislation. These provisions were not required because the amendment and revocation have been achieved through other legislation. This Order therefore revokes and re-enacts the provisions in the original order.

4. Legislative Context

4.1 This order is made under the Marriage (Same Sex Couples) Act 2013 ("the Act") which received Royal Assent on 17th July 2013. Implementation of the Act has been in several stages and the original order came into force on 3 June 2014 enabling consular marriages, where the host country permitted, to include consular same sex marriages.

4.2 Except in relation to Northern Ireland, the Act repeals the Foreign Marriage Act 1892 which, together with the Foreign Marriage Order 1970 (S.I. 1970/1539), provided the current statutory framework for consular marriages. Consular marriages in relation to Northern Ireland continue to be solemnized under the Foreign Marriage Act 1892 and the Foreign Marriage Order 1970. Consular marriages in relation to England and Wales and Scotland will be solemnized under this Order.

5. Territorial Extent and Application

5.1 The Order extends to England and Wales and Scotland. Part 3 also extends to Northern Ireland.

6. European Convention on Human Rights

Minister James Duddridge has made the following statement regarding Human Rights:

"In my view the provisions of the Consular Marriages and Marriages under Foreign Law (No. 2) Order 2014 are compatible with the Convention rights."

7. Policy background

7.1 The overall purpose of the Act is to make marriage of same sex couples lawful in England and Wales and to secure that same sex married couples are generally treated in the same way as opposite sex married couples. Marriage of same sex couples is not currently lawful in Scotland or Northern Ireland. The Order relates to consular marriages overseas and marriages under foreign law.

7.2 The original order contained all of the substantive provisions relating to consular marriages and the issuing of certificates of no impediment by consular officers where a marriage is to take place under foreign law. The Explanatory Memorandum to the original order contains the full policy background and is available here.

7.3. The additional changes made by this Order are as follows. Article 10 now makes specific provision for the Registrar General for England and Wales to pass on to the Registrar General for Scotland any consular marriage certificates which show that the couple elected Scotland as the "relevant part" of the United Kingdom under the Order; it also ensures that the Registrars General can provide certified copies of certificates of consular marriages upon payment of a fee.

7.4 There are also new provisions in Part 3 which enable superintendent registrars in England and Wales (Scotland and Northern Ireland have separate legislative provision) to issue certificates of no impediment to United Kingdom nationals who wish to get married overseas (in countries other than Commonwealth countries) under local law.

8. Consultation outcome

8.1 No specific consultation has been undertaken on 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 for the public and FCO staff was produced ahead of the implementation of the original order in June 2014.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector, apart from a likely increased workload for consular staff in those countries where the FCO will provide a marriage service for same sex couples. This will be absorbed within the current FCO budget.

10.3 An Impact Assessment has not been prepared for this instrument as no cost to 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

The legislation does not apply to small business.

12. Monitoring & review

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

13. Contact

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