EXPLANATORY MEMORANDUM TO

THE MARRIAGE OF SAME SEX COUPLES (REGISTRATION OF SHARED BUILDINGS) REGULATIONS 2014

2014 No. [DRAFT]

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

2. Purpose of the instrument

2.1 The purpose of these Regulations is to set out the procedure for the registration under section 43A of the Marriage Act 1949 ("the 1949 Act") as amended by the Marriage (Same Sex Couples) Act 2013 ("the 2013 Act") and cancellation of the registration of buildings which are shared by more than one religious organisation for the solemnization of marriages of same sex couples.

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

3.1 None

4. Legislative Context

4.1 The 2013 Act received Royal Assent on the 17 July 2013. The Marriage (Same Sex Couples) Act 2013 (Commencement No 1) Order 2013 was made on 30th October 2013. This brought into effect certain provisions of the 2013 Act for the purpose of making subordinate legislation including new sections 44A-D of the Marriage Act 1949 (as inserted by Schedule 1 to the 2013 Act) under which these Regulations are made.

4.2 These Regulations are part of a series of instruments which are being laid before Parliament at the same time as these Regulations and which are necessary to implement the 2013 Act. They include, briefly, statutory instruments:

- making consequential and other amendments to primary and subordinate legislation in England and Wales[1];
- allowing registration of religious buildings and appointment of authorised persons for marriage of same sex couples[2];
- setting out provisions on jurisdiction in the event of divorce or annulment of a marriage of a same sex couple[3];

[1] 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.
[2] The Marriage of Same Sex Couples (Registration of Buildings and Appointment of Authorised Persons) Regulations 2014.
[3] The Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014.

- setting out procedures for registration of military chapels for marriage of same sex couples[4];
- setting out procedures for marriages in British consulates and overseas armed forces bases[5];
- providing for graduated retirement benefit to be inheritable by a surviving same sex spouse[6];
- making changes to particular public service pension schemes to provide survivor benefits for married same sex couples on the same basis as civil partners[7].

5. Territorial Extent and Application

5.1 These Regulations extend to England and Wales.

6. European Convention on Human Rights

6.1 Simon Hughes MP, Minister of State in the Ministry of Justice, has made the following statement regarding Human Rights:

In my view the provisions of the Marriage of Same Sex Couples (Registration of Shared Buildings) Regulations 2014 are compatible with the Convention rights.

7. Policy background

7.1 The overall purpose of the 2013 Act is to make marriage of same sex couples possible in England and Wales. The 2013 Act seeks to secure that same sex married couples are generally treated in the same way as opposite sex married couples, while making provision to protect religious freedom in relation to the solemnization of marriage.

7.2 To achieve this overall purpose, religious organisations wishing to solemnize marriages of same sex couples are required to provide consent to the marriage of same sex couples (referred to by the 2013 Act as "opting-in") and to register the organisation's certified place of religious worship[8] to solemnize marriages of same sex couples. The 2013 Act inserts a new section 26A into the 1949 Act to this effect. This registration is separate to any registration of the building for the solemnization of marriages of opposite sex couples.

7.3 The 2013 Act inserts new sections 43A to 43D into the 1949 Act which set out the procedure for registering, and cancelling a registration of, a

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[4] The Marriage of Same Sex Couples (Use of Armed Forces' Chapels) Regulations 2014.
[5] The Consular Marriages and Marriages under Foreign Law Order 2014, and the Overseas Marriage (Armed Forces) Order 2014.
[6] The Social Security (Graduated Retirement Benefit) (Married Same Sex Couples) Regulations 2014.
[7] 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.
[8] Certified under The Places of Worship Registration Act 1855.

certified place of religious worship for the solemnization of marriages of same sex couples. Any application for registration must be accompanied by a certificate that the relevant governing authority has given consent to the marriage of same sex couples.

7.4 Not all certified places of religious worship will be used by one religious organisation. The 2013 Act therefore, inserts new sections 44A to 44D into the 1949 Act which set out the basic procedure for the registration of, and cancellation of the registration of, certified places of religious worship that are used by two or more religious organisations (referred to as "shared buildings"). The 2013 Act distinguishes between two categories of shared buildings:

a. certified places of worship subject to the Sharing of Church Buildings Act 1969 ("the 1969 Act"); and ;

b. certified places of worship that are covered by informal sharing arrangements (i.e. not under the 1969 Act).

7.5 Sections 44A and 44B of the 1949 Act set out the basic procedure for registering, and cancelling a registration of, certified places of worship subject to the 1969 Act. The procedure mirrors that in section 43A and section 43C of the 1949 Act save that an application for registration must be accompanied by an additional certificate that all of the relevant governing authorities of the sharing religious organisations have given written consents to the certified place of religious worship being used for the solemnization of marriages of same sex couples. Providing consent to a certified place of religious worship being used to solemnize marriages of same sex couples will not compel all of the sharing religious organisations to solemnize such marriages. If a sharing religious organisation wishes to solemnize marriages of same sex couples, a certificate must be provided setting out the consent of the relevant governing authority to the marriage of same sex couples.

7.6 The detailed procedures for the registration of, and cancellation of the registration of, shared certified places of religious worship are the subject of powers in sections 44A, 44B and 44D of the 1949 Act which enable the Secretary of State to make regulations. These Regulations provide this detail.

7.7 No statutory provision is made in the 2013 Act for certified places of worship that are covered by informal sharing arrangements (i.e. not under the 1969 Act). Instead sections 44C and 44D provide the Secretary of State with powers to make provision in regulations for the registration of, and cancellation of the registration of, certified places of religious worship that are the subject of informal sharing arrangements. These Regulations make this provision.

7.8 The reason that much of the procedure for the registration, and cancellation of the registration, of shared certified places of religious worship has been left to regulations is at the time of the passage of the 2013 Act very little was known about the practicalities of sharing a certified place of religious worship. The Government therefore committed to engage with religious groups that have experience of sharing arrangements and undertake a

wider consultation on this issue. These Regulations are the product of those discussions and consultation.

8. Consultation outcome

8.1 A specific consultation was undertaken between 3rd October and 1st November 2013. The consultation was accompanied by a set of draft regulations, the drafting of which was informed by discussions that had already been undertaken with religious groups that have experience of sharing arrangements. The consultation, and draft regulations, also had regard to the content of debates on this issue that occurred during the passage of the 2013 Act.

8.2. A total of 99 responses to the consultation were received. Many respondents indicated opposition to the underlying principles of the 2013 Act. As a result a large number of respondents rejected any policy which sought to make regulations allowing shared places of worship to be registered to solemnize marriages of same sex couples.

8.3 Those respondents that did comment on the regulations can be divided into two broad categories:

a. those that were concerned that the regulations could undermine religious freedoms and provide a means by which some religious organisations would have to share a building that was registered to solemnize marriages of same sex couples against their wishes or be forced out of the building; and

b. those that were concerned that the regulations could be used to enable a religious organisation to "veto" a building being registered to solemnize marriages of same sex couples even if that organisation was not a primary user of the building.

8.4 The final Regulations have, therefore, had to take account of the broad range of responses received, many of which were mutually exclusive. The final Regulations remain broadly the same as consulted upon.

8.5 The only amendment to the draft regulations is the omission of Regulation 13. This Regulation made consequential changes to the definition of "required consents" in section 49A of the 1949 Act to include the consents required under these Regulations. It was considered that the more appropriate place for this Regulation was in the Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014, which will be laid at the same time as these Regulations, relying on the powers in section 17(2) and (3) of the 2013 Act.

8.6 The Ministry of Justice will be publishing its response to the consultation prior to laying these Regulations before parliament on 23 January 2014.

9. Guidance

9.1 No additional guidance has been prepared specifically for these Regulations as the procedures to be followed where religious buildings are part of a sharing arrangement are specified in the Regulations themselves.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument. The impact on business, charities or voluntary bodies is negligible – no cost has been identified for business. There may be some costs for religious organisations relating to premises being registered for marriages of same sex couples, but these should be of the same or similar level to the costs charged by the General Register Office for registration of buildings for marriage of opposite sex couples. There may also be some costs for religious organisations in familiarising themselves with these Regulations and implementing the processes.

10.2 The General Register Office already register shared buildings for the solemnisation of marriage and will have to register shared buildings subject to formal sharing arrangements under the 1969 Act as a result of provisions on the face of the 2013 Act. The administrative processes are, therefore, already in place and we do not envisage any substantial additional costs as a result of these Regulations.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The operation of the 2013 Act will be subject to review after 5 years. Work has been undertaken to identify information that will be required in order to evaluate the effectiveness of the 2013 Act, and to put in place, where necessary, the means of gathering that information.

13. Contact

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