EXPLANATORY MEMORANDUM

THE MARRIAGE (SAME SEX COUPLES) ACT 2013 (CONSEQUENTIAL AND CONTRARY PROVISIONS AND SCOTLAND) ORDER 2014

2014 No.

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the Order is three-fold:

- First, it makes amendments to primary legislation which are consequential on the coming into force of the Marriage (Same Sex Couples) Act 2013 ("the Act"), as well as in consequence of the Civil Partnership Act 2004 ("the 2004 Act") and the Human Fertilisation and Embryology Act 2008 ("the 2008 Act").
- Second, it makes provision modifying and disapplying the effect of the provision contained in section 11(1) and (2) of, and paragraphs 1 to 3 of Schedule 3 to, the Act ("the gloss"), so that in some cases marriage is not to have the same legal effect with regard to same sex couples as it has for opposite sex couples.
- Finally, it provides for marriages of same sex couples formed under the law of England and Wales to be treated as civil partnerships in Scotland pending the extension of marriage to same sex couples under Scottish law.

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

3.1 None.

4. Legislative context

4.1 The Act received Royal Assent on 17th July 2013. It makes marriage of same sex couples lawful in England and Wales, substantially amending the Marriage Act 1949 and other related legislation.

4.2 The Marriage (Same Sex Couples) Act 2013 (Commencement No. 1) Order 2013 brought into force on 30th October 2013 certain provisions of the Act for the purpose of making subordinate legislation, as well as some other provisions. The Marriage (Same Sex Couples) Act 2013 (Commencement No. 2 and Transitional Provision) Order 2014 brings into force on 13th March 2014 the majority of the provisions of the Act extending marriage to same sex couples under the law of England and Wales.

4.3 This is one of a number of statutory instruments 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 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 procedures for registration of shared religious buildings for the solemnization of marriages of same sex couples[3];
- setting out provisions on jurisdiction in the event of divorce or annulment of a marriage of a same sex couple[4];
- setting out procedures for registration of military chapels for marriage of same sex couples[5];
- setting out procedures for marriages in British consulates and overseas armed forces bases[6];
- providing for graduated retirement benefit to be inheritable by a surviving same sex spouse[7];
- making changes to particular public service pension schemes to provide survivor benefits for married same sex couples on the same basis as civil partners[8].

5. Territorial extent and application

5.1 This instrument extends to England and Wales subject to the following. It also extends to Scotland and to Northern Ireland in relation to amendments to the 2004 Act made in paragraph 29(2) of Schedule 1 to the Order, and to Scotland as regards the treatment of a marriage of a same sex couple under English and Welsh law as a civil partnership under the law of Scotland under article 5. The amendment to section 38 of the Family Law (Scotland) Act 2006 which is consequential on the repeal of the Foreign Marriage Act 1892 (by section 13(2) of the Act) extends only to Scotland.

6. European Convention on Human Rights

The Secretary of State for Culture, Media and Sport and Minister for Women and Equalities has made the following statement regarding human rights:

In my view the provisions of the Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014 are compatible with the Convention rights.

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[1] This Order 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 of Same Sex Couples (Registration of Shared Buildings) Regulations 2014.
[4] The Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014.
[5] The Marriage of Same Sex Couples (Use of Armed Forces' Chapels) Regulations 2014.
[6] The Consular Marriages and Marriages under Foreign Law Order 2014, and the Overseas Marriage (Armed Forces) Order 2014.
[7] The Social Security (Graduated Retirement Benefit) (Married Same Sex Couples) Regulations 2014.
[8] 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.

7. Policy background

7.1 The overall purpose of the Act is to make marriage of same sex couples possible under the law of England and Wales, and to ensure that married same sex couples are generally treated in the same way as married opposite sex couples, while making provision to protect religious freedom in relation to the solemnization of marriage. Parity of treatment is achieved in particular by the operation of the gloss. The gloss provides that marriage has the same legal effect with regard to same sex couples as it has for opposite sex couples, and for the existing law of England and Wales to be interpreted so as to achieve that result. In some cases additional textual amendments are required to ensure that the correct result is obtained.

7.2 There are some exceptions to this parity of treatment, most notably in relation to legislation concerned with pensions, where the Government's policy is that married same sex couples should generally be treated in the same way as civil partners. In those excepted cases, specific provision to counter the effect of the gloss is needed. In addition, there are some pieces of marriage-related legislation which contain gender-specific provisions. This means they may apply only to married women, for instance. The effect of the gloss is that any reference in existing legislation to a married person now extends to all people married to someone of the same sex, but the gloss does not have any effect on how legislation applies to opposite sex couples. The overall result of the gloss applying could therefore be undesirable as it could create new differences in treatment between married same sex and opposite sex couples. Where the policy intent is to maintain the gender-specific effect of the legislation, provision needs to be made to treat same sex couples differently from opposite sex couples.

Scotland

7.3 When marriage of same sex couples is implemented in England and Wales, it will not be lawful in Scotland. The Scottish Parliament is currently in the process of legislating to make marriage of same sex couples lawful under Scottish law but this will not be in force by the time such marriage is lawful in England and Wales. Until it does come into force, a same sex couple who marries in England and Wales and then moves to Scotland would not have any legal recognition of their relationship under Scottish law. This Order ensures that such a couple is treated under the law of Scotland for the time being as if they were in a civil partnership. The Scottish Ministers have consented to this provision.

Schedule 1: Consequential amendments to primary legislation

Amendments which secure equal treatment of all married couples and civil partners

7.4 As set out above, the effect of the gloss means that a reference to a married person in existing legislation includes a person married to someone of the same sex. Where the original legislation is gender-specific, this means that one category of married person is

not covered by that legislation. For example, a reference to a "widow" in existing legislation now extends to a woman who was married to a man but also a woman who was married to a woman and a man who was married to a man, but not a man who was married to a woman. Where appropriate, amendments have been made to ensure that all married people or formerly married people are now covered.

7.5 Paragraph 1 amends section 6(9)(a) of the Metropolitan Public Carriage Act 1869 to allow for the transfer of a Hackney Carriage licence on death of the licence holder to any surviving spouse or surviving civil partner. Paragraph 1 also repeals section 6(9)(b), which allows a woman who holds a licence and who marries while it is current to transfer it to her husband. Applying the gloss would not produce the right result since, unless further amendments were made, this right would not apply to men married to women or to civil partners. The right to pass on a licence in this way was a gender-specific provision made many years ago. It is now considered to be outdated and unnecessary and so is being repealed.

7.6 The amendments made by paragraphs 2, 3, 6, 9, 17 and 24 of Schedule 1 all make provision to equalise the position between women and men in the same way as the amendment made by paragraph 1 to section 6(9)(a) of the Metropolitan Public Carriage Act 1869. Paragraph 2 amends a reference in section 4 of the Pensions Commutation Act 1871, which formerly applied only to a widow, so that the same restrictions as currently apply to widows now apply to all surviving spouses. Paragraph 3 substitutes a reference to a "widow" in section 2 of the Local Government (Emergency Provisions Act) 1916 with a reference to "surviving spouse", ensuring that any spouse can receive benefits under that section. Similar amendments are made to the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (paragraph 6), the Transport Act 1962 (paragraph 9), the Transport Act 1978 (paragraph 17), and the Trade Union and Labour Relations (Consolidation) Act 1992 (paragraph 24).

Amendments dealing with family relationships

7.7 The Order contains a number of amendments relating to family relationships which are consequential to changes made by the Act. In particular, the Act amended the 2008 Act to insert references to marriage where appropriate. Currently where a woman has fertility treatment, the 2008 Act provides that, if she is in a civil partnership at the time, her civil partner is to be treated as the second parent of the child (section 42). The Act amends section 42 to ensure the same result is achieved in respect of a woman who is married to a woman. As a consequence, amendments to other legislation need to be made to reflect the fact that a child could now have two female parents who are married, and paragraphs 4, 7, 8, 15(3) to (5), 19 and 34 of Schedule 1 contain such amendments. Paragraph 4 makes amendments to the Population (Statistics) Act 1938 to ensure that paragraph 1(d) of the Schedule to that Act appropriately identifies the statistical information to be recorded at a birth registration. Paragraphs 7 (the Births and Deaths Registration Act 1953) and 8 (the Registration of Births, Deaths and Marriages (Special Provisions) Act 1957) amend the legislative provisions concerning registration of births to reflect the fact that two married women may now be registered as parents of a child. As

the Births and Deaths Registration Act 1953 has been amended by another Act (the Welfare Reform Act 2009) but the amendment is not yet in force, paragraph 34 of Schedule 1 amends the amending provision in the Welfare Reform Act 2009. Paragraph 15(3) to (5) amends the Legitimacy Act 1976 to recognise that same sex couples may now be either married or civil partners.

7.8 The Order also makes amendments consequential to the 2008 Act concerning the legitimacy of children born to women who are not married or in a civil partnership (see section 43 of the 2008 Act). Paragraph 14 of Schedule 1 ensures that a child born to a woman in a relationship with another woman who is treated as a parent by virtue of section 43 of the 2008 Act is treated as legitimate for the purposes of the Fatal Accidents Act 1976 in the same way as a child born to an unmarried man and woman. Paragraph 15(2) amends section 1(2) of the Legitimacy Act 1976 which concerns the children of void marriages. At the current time this only refers to children born to void marriages between a man and a woman and so provision needs to be made to extend this to children born to a woman in a void marriage to another woman. Paragraph 19 amends the Family Law Reform Act 1987 to ensure that the provision it makes about treating people as legitimate (or not as the case may be) reflects the fact that two women may now be married.

Amendments dealing with various ways in which relationships between couples are described

7.9 Some existing legislation describes legal relationships in ways which reflect the position that marriage could only be between a man and a woman. The Order amends various provisions to clarify the new position that marriage of same sex couples is now lawful. Paragraphs 12, 16, 18, 20 to 23, 25, 26, 28, 30, 32 and 36 of Schedule 1 contain amendments of this type. In some cases, although the gloss would produce the right effect, an amendment is made to make the position clearer on the face of the legislation.

7.10 Paragraph 12 amends section 16C of the Consumer Credit Act 1974 to replace a reference to a relationship having the characteristics of a relationship between husband and wife and to refer instead to a married couple, so that the intended effect of the legislation is clear on its face. This provision will be repealed in full on 1st April 2014 (S.I. 2013/1881). The following paragraphs make similar amendments:

- Paragraph 18 amends section 3 of the Pneumoconiosis etc. (Workers' Compensation) Act 1979, which defines what is meant by a qualifying relationship for the purposes of that section, to ensure this reflects the position that same sex couples can be married.

- Paragraph 21(3) amends the definition of couple set out in Schedule 1 to the Child Support Act 1991 to reflect the new position and paragraph 22 makes changes to various provisions of the Social Security Contributions and Benefits Act 1992 to reflect that a same sex couple can cohabit as if they were married. Paragraph 23

makes a similar amendment to section 15A of the Social Security Administration Act 1992 and the definition of "partner" set out in that section.

- Paragraph 25 amends the Pension Schemes Act 1993 to ensure that the requirements imposed on pension schemes to pay a guaranteed minimum pension apply in the same way to surviving spouses who were married to someone of the same sex as those which apply to men who were married to a woman and surviving civil partners.

- Paragraphs 26, 28, 32 and 36 provide for changes to the definition of "couple" to ensure that in the relevant legislation married couples (whether of the same or opposite sex), civil partners, and people living together as if they were married are treated alike. The Acts affected are the Jobseekers Act 1995 (paragraph 26), the State Pension Credit Act 2002 (paragraph 28), the Welfare Reform Act 2007 (paragraph 32), and the Welfare Reform Act 2012 (paragraph 36). Paragraph 30 amends the Mental Capacity Act 2005, to ensure that a reference to people not married to one another but living together as if they were married includes both same sex and opposite sex couples.

- Paragraphs 16 and 20 amend the Rent Act 1977 and the Housing Act 1988 respectively. These amendments, which are similar, ensure that where a person was cohabiting with a tenant as if they were married, that person is treated as the tenant's surviving spouse (regardless of gender), but if they were living together as civil partners, they are treated as the tenant's surviving civil partner. The treatment is the same in each case, the effect being that only one person can succeed to a tenancy on the death of the tenant under the relevant provisions.

Other consequential amendments

7.11 The Order also contains further amendments. Paragraph 5(2) of Schedule 1 amends section 28 of the Marriage Act 1949 to make clear that parental consent is not required under that Act where a child gives notice of marriage, having previously been in a civil partnership which ended with the death of their partner, just as such consent would not be required for a widow or widower. Paragraph 29(3) makes a similar amendment to the 2004 Act. Paragraph 5(3) provides that where registration of a building for the purpose of solemnization of marriages of opposite sex couples is cancelled, it is also cancelled for the purpose of solemnization of marriages of same sex couples. Paragraph 5(4) amends the definition of "required consents" in section 49A of the Marriage Act 1949 to include the consents required under the Marriage of Same Sex Couples (Registration of Shared Buildings) Regulations 2014 (which come into force on 13th March 2014). If a same sex couple knowingly and wilfully marries in the absence of the required consents, the marriage will be void.

7.12 Paragraph 11 amends the Sharing of Church Buildings Act 1969. Schedule 1 to the Sharing of Church Buildings Act 1969 modifies the operation of the Marriage Act 1949 in its application to church buildings which are subject to formal sharing

agreements. Paragraph 11 provides that the modifications to the Marriage Act 1949 contained in Schedule 1 to the Sharing of Church Buildings Act 1969 apply in the same way to persons authorised to be present at the solemnization of marriages of same sex couples as they do to persons so authorised for marriages of opposite sex couples. Paragraph 11 also provides, subject to sections 44A to 44C of the Marriage Act 1949 (inserted by Schedule 1 to the Act) regarding shared premises and any regulations made under those provisions, that where a shared church is registered for the solemnization of marriages of same sex couples, and one withdraws from the sharing arrangement, the registration is not cancelled.

7.13 Paragraph 13 amends section 59 of the Social Security Pensions Act 1975. This has previously been amended by section 137 of the Pensions Act 2008. Those amendments are not yet fully in force; however, it is intended that they will be brought into force by a commencement order which is to be made before the Order comes into force. It is envisaged that both the amendments made by section 137 and the amendments made by the Order will come into force at the same time, so ensuring that section 59 is amended appropriately to deal with all surviving spouses and civil partners. Further amendments are made to section 59 in Schedule 3 to this Order.

7.14 Paragraph 21(2) and (3) amends the Child Support Act 1991 to ensure that same sex and opposite sex couples are treated equally with regard to the provision that Act makes on the calculation of maintenance due from an absent or non-resident parent.

7.15 Paragraph 29 amends the 2004 Act so that overseas marriages of same sex couples are now recognised as marriages in England and Wales, rather than treated as civil partnerships. Up to now, as marriage of same sex couples was not lawful in England and Wales, the 2004 Act provided that overseas marriages of same sex couples as well as overseas civil unions would be treated as civil partnerships in England and Wales. The 2004 Act now is amended so that only overseas civil unions of same sex couples are treated as civil partnerships in England and Wales. The Act made this amendment in Schedule 2 but the required amendment was inadvertently made to the wrong section of the 2004 Act. Paragraph 29(1) and (2) therefore amends the correct section (and Schedule 2 paragraph 5 of the Act will not be brought into force).

7.16 Paragraph 31 amends section 38 of the Family Law (Scotland) Act 2006. This relates to a devolved matter, namely provision concerning the validity in Scottish law of marriages contracted outside Scotland. Section 38(1) contains a reference to the Foreign Marriage Act 1892, which will be repealed when section 13(2) of the Act is brought into force. The amendment substitutes a reference to the Foreign Marriage Act 1892 with appropriate references to the Act. The Scottish Ministers have consented to this provision.

7.17 Paragraph 33 amends the Statistics and Registration Service Act 2007 to allow the Registrar General to pass on to the Statistics Board information that may be needed for the purposes of gathering relevant national statistics about marriage, for example statistics about marriages of same sex couples.

7.18 Paragraph 35 amends section 67 of the Equality Act 2010 which makes provision for the purposes of an equal pay claim relating to pensions. A person making a claim for equal pay must produce a real life example of a comparator of the opposite sex to them to assess if they are in fact being unlawfully discriminated against. This amendment provides that a person who is married to someone of the same sex, or is in a civil partnership, should be compared for the purposes of an equal pay claim to a person of the opposite sex who is also either married to someone of the same sex or who is in a civil partnership. That acknowledges that there are lawful differences in pension entitlements for those married to someone of the opposite sex compared to those married to someone of the same sex or in a civil partnership in relation to accruals before the 2004 Act came into force. These differences need to be taken into account when assessing an equal pay claim. Paragraph 35 simply extends the current provision in relation to those in a civil partnership to include those married to someone of the same sex. Paragraph 27 repeals a reference in the Pensions Act 1995 which is consequential to this change, removing a reference to "civil partnership status" which is no longer needed.

Amendments consequential to the Civil Partnership Act 2004

7.19 A number of pieces of legislation were inadvertently not amended to recognise the introduction of civil partnerships when the 2004 Act was implemented. The Order therefore makes these amendments. Paragraphs 1, 3, 6, 9, 10, 17 and 24 of Schedule 1 make provision of this kind, as well as in some cases ensuring the relevant provisions apply to all married or formerly married couples. Paragraph 1 amends the Metropolitan Carriage Act 1869 as described above, to ensure that a Hackney Carriage licence can be transferred on the death of the holder to a civil partner just as it could to a spouse. As set out above, paragraph 3 substitutes a reference to a "widow" in section 2 of the Local Government (Emergency Provisions) Act 1916, to include all surviving spouses and also add a reference to civil partners. The amendments in paragraph 6 (to the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951), in paragraph 9 (to the Transport Act 1962), in paragraph 17 (to the Transport Act 1978) and in paragraph 24 (to the Trade Union and Labour Relations (Consolidation) Act 1992) also add references to civil partners alongside the amendments described above. Paragraph 10 simply inserts a reference to civil partners alongside a reference to spouses in the Harbours Act 1964.

Schedule 2: Provision contrary to the gloss

7.20 In some cases the gloss which applies to all England and Wales legislation would create inappropriate results. The gloss therefore needs to be made subject to other provision or disapplied. Schedule 2 contains provision making the necessary changes.

Part 1: Common law

7.21 Part 1 of Schedule 2 ensures that the Act does not change common law relating to the acquisition of titles of royalty or nobility by marriage. In particular, a person married to a reigning King has the right to be called "the Queen", and a person married to the Prince of Wales has the right to the title "Princess of Wales". This Part of the Schedule

ensures that these rights, and similar rights of women married to peers, are not extended to same sex couples or to the husbands of female peers. The Government does not think it would be appropriate to extend these ancient gender-specific rights in this way.

Part 2: EU instruments

7.22 Paragraph 3 of Schedule 2 makes it clear that section 11(1) and (2) does not apply the gloss to any EU instruments. As some EU instruments automatically form part of the law of England and Wales without the need for any further implementing legislation, in the absence of this provision it might be argued that these should be interpreted in accordance with the gloss in section 11(2). Paragraph 3 removes the scope for any possible confusion in that respect. The provision made by the Act and this paragraph does not affect how a particular EU instrument applies to same sex and opposite sex couples.

Part 3: Enactments (general)

7.23 Paragraph 4 of Schedule 2 makes provision to which the gloss is subject in a specific case. The gloss applies to the rules on the calculation of death benefits set out in the Schedule to the Armed Forces Pension Scheme Order 2005, but in this case the gloss needs to be read in accordance with the provision made by paragraph 4(2). This provides that a surviving same sex spouse is to be treated as if they were a surviving civil partner. A corresponding textual amendment is made in paragraph 7 of Schedule 3.

7.24 Paragraph 5 lists legislation which is similarly excluded from the effect of the gloss. The legislation from which the gloss is disapplied falls broadly into two categories. First, the gloss is disapplied from largely historical legislation which has little or no effect on married couples today. In particular, some of this legislation granted rights to women reflecting their growing emancipation, and so its effect has been confined to the persons to whom it originally applied. The Quia Emptores 1289, the Crown Private Estate Act 1800, the Fines and Recoveries Act 1833, and particular provisions of the Married Women's Property Acts of 1882, 1893 and 1907, the Settled Land Act 1925, the Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, and section 60 of the Government Annuities Act 1929 are excluded from the effect of the gloss on this basis.

7.25 Similarly, the defence of marital coercion in section 47 of the Criminal Justice Act 1925 is excluded because it too is a historical gender-specific provision applied in very particular circumstances. The government has indicated its intention to repeal this provision and amendments have been tabled to the Anti-Social Behaviour, Crime and Policing Bill to this effect. Subject to Parliamentary approval, the repeal would take effect two months after the Bill receives Royal Assent.

7.26 Secondly, certain provisions in primary and subordinate legislation relating to occupational pensions are excluded from the effect of the gloss. These exclusions from the effect of the gloss are made because it is the Government's policy that married same sex couples should generally be treated in the same way as civil partners in relation to pensions. Currently, for historical reasons, under many occupational pension schemes

some women who survive their male spouse receive survivor benefits (i.e. benefits payable to a surviving spouse or civil partner of a member following the member's death) based on more of the deceased scheme member's service than men who survive their female spouse and surviving civil partners. Married same sex couples are in general treated, in respect of pensions legislation, like civil partners. In public service schemes this means that in most cases they are also treated in the same way as men who survive their female spouse.

7.27 The gloss, therefore, is disapplied from particular provisions in enactments such as the Occupational Pension Schemes (Contracting-out) Regulations 1996. In addition, a number of the pension schemes listed in paragraph 5 now relate to privatised industries, even though they would still be treated as legislation for the purposes of the Act, and so would otherwise be subject to the gloss. It would be inappropriate for these schemes to be subject to the gloss, as private pension schemes should be free to make what provision they wish for married same sex couples, provided that they comply with the relevant provisions of the Equality Act 2010.

7.28 Section 16 of the Act requires the Government to undertake a review of relevant differences in survivor benefits and the costs and effects of removing these differences, which must report by 1st July 2014.

Schedule 3: Consequential amendments to enactments etc. as a result of contrary provision made by Schedule 2

Part 1: Enactments (general)

7.29 In some cases, disapplication of the gloss alone does not suffice and further consequential amendment is needed. This is because, although disapplication of the gloss ensures that the right result is achieved, it does not itself provide any guidance as to how married same sex couples are to be treated under the particular legislation in question. Therefore in some cases textual amendment is required to make this clear. Accordingly, due to the general policy in respect of public service pension schemes, the legislation governing the increase in the rates of these pensions over the years needs to be amended to be confined as appropriate to women formerly married to men. Paragraph 1 of Schedule 3 makes the necessary amendment to the Pensions (Increase) Act 1971, while paragraph 3 amends the various Orders which have been made under that Act. The gloss is disapplied in part from section 59 of the Social Security Pensions Act 1975 due to the need to maintain that section's differentiation between women formerly married to men and other couples. Paragraph 2 amends the Social Security Pensions Act 1975 so as to ensure that the current provisions which apply in a gender-specific way continue to have the same result, and makes amendments consequent to those changes.

7.30 Paragraph 4 similarly ensures that Schedule 5 to the Social Security Contributions and Benefits Act 1992 continues to apply in a gender-specific way. Schedule 5 makes provision for people who defer their entitlement to a retirement pension and therefore

needs to maintain the current existing distinction for inheritance between women formerly married to men on the one hand and other couples on the other.

7.31 The Occupational Pensions Schemes (Contracting-out) Regulations 1996 make provision in regulation 55 about the provision which pension scheme rules must make about guaranteed minimum pensions. Regulation 69B makes provision about the conversion of the guaranteed minimum pension into other benefits and in particular focuses on survivor benefits. Paragraph 5 amends these provisions to maintain the current differential treatment between women formerly married to men and other couples.

7.32 Paragraph 6 amends the Occupational Pension Schemes (Modification of Schemes) Regulations 2006. These Regulations make provision about how trustees of pension schemes can vary schemes so as to provide for entitlements to be given to new groups without this affecting the subsisting rights accrued by the current members of the scheme. When civil partnerships were introduced, the Regulations were amended specifically to provide that payments could be made to civil partners; similar amendments are needed now to cater for married same sex couples. Paragraph 5(hhh) of Schedule 2 disapplies the gloss from the existing provision relating to civil partners. This currently compares civil partners to married opposite sex couples and so should not be glossed. Paragraph 6 of Schedule 3 then makes provision to ensure that the current effect of treating civil partners in the same way as opposite sex widows or widowers is maintained. This provision is supplemented in the Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order 2014 which makes equivalent provision for married same sex couples.

Part 2: Enactments (public service pension schemes)

Amendments relating to particular public service pension schemes

7.33 Paragraphs 7 to 17 of Schedule 3 make provision in respect of certain armed forces pension schemes. The legislation currently contains a number of gender-specific provisions the effect of which needs to be maintained, and so textual amendments are required to make clear how these provisions apply in respect of married same sex couples. Following disapplication of the gloss in Schedule 2, the textual amendments maintain the current treatment of women married to men in the relevant schemes, aligning the treatment of married same sex couples with that accorded to civil partners and men married to women.

7.34 Paragraph 17 inserts a standard provision into the rules of the public service pension schemes listed in the table to ensure that those schemes treat married same sex couples in the same way as civil partners and not like married opposite sex couples, in line with Government policy. The provision also governs the treatment of cohabiting couples. Other public service pension schemes are amending their own schemes to take account of the extension of marriage to same sex couples.

8. Consultation outcome

8.1 Prior to introduction of the Marriage (Same Sex Couples) Bill the Government carried out a consultation on how marriage of same sex couples should be introduced, which ran for 13 weeks and closed on 14th 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 in relation to this Order as it is a largely technical instrument intended to ensure that the law works as envisaged in the Act. However, guidance has been issued by the General Register Office to registration service staff who will be involved with processes related to marriage of same sex couples. In addition, guidance on the Act will be produced by the Equality and Human Rights Commission.

10. Impact

10.1 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 places of worship being registered for marriages of same sex couples, but these will be at the same level as the fees for registration of buildings for marriage of opposite sex couples, and lower where the building is already registered for that purpose.

10.2 The impact on the public sector consists of costs which fall primarily on public bodies which need to adjust information technology systems or administrative processes to register same sex couples as married. These include the General Register Office, Department for Work and Pensions, Office for National Statistics, Her Majesty's Revenue and Customs, Ministry of Justice, and Her Majesty's Courts and Tribunals Service. There may also be some familiarisation costs for local authorities who employ registrars to conduct civil marriage ceremonies.

10.3 An impact assessment has not been prepared for this instrument as no cost on business is foreseen, but an impact assessment was published alongside the Act, which remains current, and this is available at 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 will be subject to review after 5 years. Work is being undertaken to identify information which will be required in order to evaluate the effectiveness of the Act and to put in place, where necessary, the means of gathering that information.

13. Contact

David Ware at the Department for Culture, Media and Sport Tel: 0207 211 6343 or email: david.ware@culture.gsi.gov.uk can answer any queries regarding the instrument.