



**Isle of Man**  
**Government**

*Reiltys Ellan Vannin*



**Draft**  
**Marriage (Same Sex Couples) Bill**  
**Consultation Document**

**Cabinet Office**  
**Oik Coonceil ny Shirveishee**

**October 2015**

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## Foreword by the Chief Minister

I am extremely pleased to be able to bring forward a consultation on the proposed introduction of legislation to enable same sex couples to be married in the Isle of Man.

The passing of this legislation would send a strong message to the world that the Island is a modern and inclusive nation.

The introduction of the Civil Partnership Act in 2011 was a very important step forward but the world has moved on since then at a remarkable rate. None of us could have imagined that less than five years later same sex couples would be able to marry in three out of the four nations of the United Kingdom; that the Republic of Ireland would have voted in a referendum for the introduction of legislation to allow same sex couples to marry; or that the US Supreme Court would have ruled in favour of same sex couples being able to marry in all of the 50 States of America.

In Northern Ireland, where the Assembly has not yet been able to reach agreement on same sex marriage legislation, opinion polls have shown there is strong public support for the right of same sex couples to be married, with one survey earlier this year finding that 68% of adults were in favour.

Our fellow Crown Dependencies have taken significant steps. Recently, following public consultation, Jersey's parliament voted overwhelmingly in favour of the introduction of legislation by the start of 2017 to allow same sex couples to marry. Guernsey has carried out a consultation on legal unions for same sex couples. Although the Guernsey Government stated in the consultation that its preferred option was the introduction of *Union Civile* it has been reported in the Guernsey Press that the majority of the responses instead supported full marriage for same sex couples.

I recognise that the proposed legislation to allow same sex couples to be married may generate strong and polarised views, with some organisations and individuals believing very strongly that marriage can only ever be between a man and a woman.

However, the time is right for this legislation to be introduced. I believe that the values of fairness and tolerance are shared by the overwhelming majority of people in our Island and that allowing loving, committed couples of the same sex to be married in no way undermines the institution of marriage.

I look forward to receiving comments from the public and would encourage as many people as possible to respond to this consultation.

Hon Allan Bell MHK  
Chief Minister

## 1. Introduction

- 1.1 The issue of same-sex marriage is one that a number of countries have considered over the last few years. Same-sex marriage legislation was introduced in England and Wales in 2013 and in Scotland in 2014. In May 2015, the Irish Government held a referendum in which 62% of voters<sup>1</sup> expressed their support for its introduction, and in June this year the US Supreme Court ruled that same-sex marriage is a right protected by the US Constitution in all US states, not just those states that had legislated to allow it. Approximately 20 countries around the world now either allow same sex marriage or are committed to introducing legislation to provide for same sex marriage<sup>2</sup>.
- 1.2 In Jersey, following a public consultation held in 2014, the Chief Minister has lodged a Proposition with the States inviting it to agree that appropriate legislation to allow same-sex couples to get married in Jersey should be brought forward for approval by no later than January 2017<sup>3</sup>. On 22 September 2015 the States voted 37 – 4 in favour (with one abstention) of the Proposition.
- 1.3 In Guernsey, which currently does not have civil partnership legislation, a consultation closed earlier this year on the Guernsey Policy Council's preferred option of the introduction of a *Union Civile* (basically the equivalent of a civil partnership) for same sex couples. Although the outcome of that consultation has not been formally published, it is understood that there was a large response which showed greater support for full same sex marriage than for *Union Civile*<sup>4</sup>. The Policy Council will now bring forward its proposals for politicians to consider before next April's general election in Guernsey.
- 1.4 Of course, the picture is not entirely clear cut as same sex marriage is still not allowed in one part of the United Kingdom, Northern Ireland, where legislation has been blocked by the Unionist parties in the Assembly. However, an Ipsos MORI poll in July 2015 found that 68% of adults in Northern Ireland believed same-sex couples should be allowed to marry<sup>5</sup>. Two same sex couples in Northern Ireland have also been granted leave to seek a judicial review of the lack of equal marriage legislation.
- 1.5 In every country which has introduced, or refused to introduce, same sex marriage it has been subject to a good deal of debate. There is a clear division between some people of faith, who believe that marriage can only ever be a union between a man and a woman, and others who believe it is both unfair and untenable to refuse to allow loving same sex couples to marry each other. These views cannot be easily reconciled.

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<sup>1</sup> With an overall turnout of 60.52% of eligible voters. In Ireland a referendum on this issue was necessary because this is a requirement for any legislation that will amend the Irish Constitution.

<sup>2</sup> [https://en.wikipedia.org/wiki/Same-sex\\_marriage](https://en.wikipedia.org/wiki/Same-sex_marriage)

<sup>3</sup> <http://www.statesassembly.gov.je/AssemblyPropositions/2015/P.77-2015.pdf>

<sup>4</sup> <http://guernseypress.com/news/2015/07/14/consultation-shows-majority-support-same-sex-marriage/>

<sup>5</sup> <http://www.belfasttelegraph.co.uk/news/northern-ireland/gay-marriage-now-has-overwhelming-support-in-northern-ireland-poll-31355428.html>

- 1.6 From the consultation on the draft Equality Bill it is clear that there is a level of interest in this issue in the Island, with a number of the responses to the consultation suggesting the provision to allow for same sex marriage should be included in the Bill.
- 1.7 Whilst it is not considered to be appropriate to add same sex marriage into the Equality Bill itself, the Council of Ministers has agreed that there should be a consultation on legislating separately in respect of marriage equality.
- 1.8 A draft Bill has therefore been prepared on which the comments of the public are sought.
- 1.9 The Marriage (Same Sex Couples) Bill mirrors, with necessary adjustments to reflect certain differences in the law of the Island, the [Marriage \(Same Sex Couples\) Act 2013](#) (of Parliament) which applies to England and Wales. This approach was taken as it was considered to be quickest and most appropriate way forward. It recognises the similarities of the legal systems of the Island and of England and Wales and also the status of the Church of England in the Isle of Man.
- 1.10 It should be noted that the draft Bill in this document has been prepared by the legislative drafter, largely in his own time, purely for the purposes of consultation and seeing what the introduction of marriage for same sex couples might mean in practice in relation to the law of the Island. As such, it may still contain typographical errors and other drafting issues. To assist readers in understanding how the Marriage Act 1984 would appear if it were to be amended by the Bill in its current form a version of the 1984 Act with the proposed amendments included in it has been prepared by the Cabinet Office and is provided separately.

## **2. Summary of the draft Bill**

- 2.1 The main purpose of the Bill is to enable same sex couples to marry, either in a civil ceremony (i.e. a civil ceremony in a register office or approved premises e.g. a hotel) or, provided that the religious organisation concerned is in agreement, on religious premises, with the marriage being solemnized through a religious ceremony.
- 2.2 The key elements of the Bill are to:
- provide that same sex couples can get married in the Island;
  - provide that such marriages are the same as marriages between a man and a woman under the law of the Island;
  - permit marriage of same sex couples by way of a civil ceremony;
  - permit marriage of same sex couples according to religious rites and usages where a religious organisation has opted in to that process (with the exception of the Church of England);

- provide that there will be no obligation or compulsion on religious organisations or individuals to carry out or participate in a religious marriage ceremony of a same sex couple;
  - provide protection under the law for religious organisations and individuals who do not wish to marry same sex couples in a religious ceremony.
- 2.3 The Bill does not remove the availability of civil partnerships for same sex couples; there is provision in the Bill for those in a civil partnership to convert that relationship to a marriage if they choose to do so.
- 2.4 Religious organisations and their representatives who do not wish to marry same sex couples are protected from being compelled to do so through a series of religious protections, including:
- an explicit provision in the Act that no religious organisation can be compelled to opt in to marry same sex couples or to permit this to happen in their place of worship, and no religious organisation or individual can be compelled to conduct religious same sex marriage ceremonies;
  - an “opt-in” mechanism whereby a marriage of a same sex couple cannot be carried out on religious premises or with a religious ceremony without the express consent of the religious organisation’s governing body;
  - ensuring that the Act does not interfere with Anglican Canon law or ecclesiastical law;
  - ensuring that the common law duty on Church of England clergy to marry parishioners does not extend to same sex couples.
- 2.5 The Bill also provides for the recognition in the Island of the marriages of same sex couples that were entered into outside the Island.
- 2.6 The Bill is largely an amending Bill; primarily it amends the [Marriage Act 1984](#) but it also makes consequential and incidental amendments to the [Sharing of Church Buildings Act 1986](#)<sup>6</sup>, the [Matrimonial Proceedings Act 2003](#) and the [Civil Partnership Act 2011](#).
- 2.7 The Bill is not itself expected to lead to any increase in Government expenditure or diminish Government revenues. Consequential amendments to the social security system may, however, do so.
- 2.8 It is not anticipated that the Bill will have an impact on public expenditure or revenue. This assumes that the powers in the [Pension Schemes Act 1995](#) and the [Social Security Act 2000](#) will be exercised to apply with necessary modifications the provisions of Parts 5 and 6 of Schedule 4 to the Marriage (Same Sex Couples) Act 2013 to secure corresponding treatment in the fields of state and occupational pensions as applies in the United Kingdom.

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<sup>6</sup> This Act extends the [Sharing of Church Buildings Act 1969](#) (of Parliament) to the Island with appropriate modifications

### 3. Commentary on the clauses and Schedules of the Bill

- 3.1 **Part 1** of the Bill is introductory; **clause 1** gives the short title of the resulting Act and **clause 2** provides for the Bill to be brought into operation by one or more Orders made by the Council of Ministers.
- 3.2 **Part 2** of the Bill mainly amends the Marriage Act 1984 ("the 1984 Act") to provide for the creation of same sex marriages. It also deals with the effect of extension of marriage to same sex couples, consequential amendments and repeals.
- 3.3 **Clause 3** introduces the amendments to the 1984 Act.
- 3.4 **Clause 4** amends section 1 of the 1984 Act to remove the requirement that marriage can only be between persons of the opposite gender.
- 3.5 **Clause 5** amends section 3 of the 1984 Act to extend circumstances in which a person under the age of 18 years does not need parental consent to marry to include where the young person is a surviving civil partner. The effect of this amendment is that a person who has previously been a civil partner and whose partner has died will not need to get parental consent for marrying another person even if he or she is under 18.
- 3.6 **Clause 6** inserts a new section 4A into the 1984 Act declaring the marriage of persons of the same sex to be lawful. Under subsection (2) of new section 4A marriages of same sex couples may be solemnized in accordance with Part III (marriage under a registrar's certificate) or Part IV (marriage under the licence of a Deemster) of the 1984 Act - but not Part II (marriage according to rites of the Church of England).
- 3.7 Subsection (3) of new section 4A confirms that there is no compulsion on a clerk in Holy Orders of the Church of England to solemnize the marriage of a same sex couple. This ensures there is no obligation on the clergy of the Church of England to marry same sex couples and that the common law duty on the clergy of the Church of England to marry parishioners is not extended to same sex couples.
- 3.8 **Clause 7** inserts a new section 4B into the 1984 Act dealing with the recognition, in the law of the Island, of same sex marriages contracted overseas. It is irrelevant whether the law of the place of marriage provides for marriage of same sex couples before or after this provision comes into force. Overseas marriages of opposite sex couples which are valid as to capacity and form according to the relevant law are recognised under the law of the Island. New and existing overseas marriages of same sex couples which are valid as to capacity and form according to the relevant law will be recognised under the law of the Island from the date of implementation of the Act.
- 3.9 **Clause 8** inserts a new section 4C into the 1984 Act. This provides that there is no compulsion on any person to participate in a marriage ceremony according to religious rites if the parties to be married are of the same sex. It thus permits same sex marriage ceremonies according to religious rites, but does not compel participation in



them. For the avoidance of doubt there is no opt-out for any person in relation to civil marriages.

- 3.10 Subsection (1) states that individuals and religious organisations may not be compelled by any means to carry out an “opt-in activity”, which is defined in subsection (3) to mean the various types of activity relating to the decision of a religious organisation to opt in to solemnizing marriages of same sex couples. Subsection (1) also states that they cannot be compelled to refrain from carrying out an “opt-out activity”, defined to mean an activity which reverses or modifies the effect of an opt-in activity.
- 3.11 Subsection (2) makes clear that individuals may not be compelled by any means to carry out, attend or take part in a religious marriage ceremony of a same sex couple. It also makes clear that individuals and religious organisations may not be compelled to consent to religious marriage ceremonies of same sex couples being conducted. In each case this must be where the individuals or religious organisations do not wish to carry out the specified conduct because it concerns the marriage of a same sex couple.
- 3.12 The concept of “compulsion” is a broad one, which would include, but not be limited to, attempts to use criminal or civil law, contractual clauses, or the imposition of any detriment to force a person to carry out such an activity. The section provides no specific remedy, but makes clear that no attempt at such compulsion will be upheld. The remedy for any action taken to compel someone would depend on the nature of the action taken.
- 3.13 Subsection (3) contains the definitions of “opt-in” activity and “opt-out activity”, and subsection (4) defines terms used in the section. It makes clear that the conduct of a marriage registrar or the Chief Registrar is not included in the protection provided by this section.

#### *Examples*

- The governing body of a religious organisation meets to consider whether to opt into conducting marriage of same sex couples according to its rites. It decides not to. This would be lawful and no member of the governing body, nor the organisation itself, could be forced, by legal action or otherwise, to change its decision.
- A religious organisation opts in to conducting marriage of same sex couples. However, one of the organisation’s ministers does not approve of such marriage and does not wish to solemnize such a marriage. This would be lawful. The religious organisation arranges for an alternative minister to conduct the marriage ceremony for the same sex couple.
- A person who acts as an authorised person at marriages in his or her local church does not wish to do so in relation to same sex marriage ceremonies, even though the church has opted in to marriage of same sex couples. It would be lawful for him or her to refuse. A civil marriage registrar is asked to step in to cover that role, but does not wish to do so because the registrar does not approve of marriage of same sex couples. It could be unlawful discrimination for the civil registrar to refuse.

- An organist who usually plays at wedding services at a church does not wish to play at a wedding service of a same sex couple. This would be lawful because he is involved in the religious act of worship i.e. the religious ritual of the wedding service. This is the case whether he is a volunteer or employed by the church.
- 3.14 **Clause 9** makes a minor amendment to section 5 to reflect the fact that a marriage may now be celebrated at any time.
- 3.15 **Clause 10** replaces section 17 which specifies the circumstances in which a marriage is void. The removal on the prohibition of same-sex marriages means that that ground for avoiding a marriage is removed, but the provisions are also amended to make them somewhat clearer.
- 3.16 **Clause 11** replaces the existing section 19 of the 1984 Act with a new section dealing with those marriages for which no opt-in is necessary (for an explanation of opting-in and opting-out see the concepts in section 4C inserted by clause 8).
- 3.17 **Clause 12** inserts a new section 19A into the 1984 Act. This will permit religious organisations to opt-in to the celebration of same sex marriages on their premises. Unlike the corresponding provisions in England it does not make specific provision for Jewish or Quaker weddings. This is because there is at present no synagogue on the Island, and the Quaker meeting house is not registered for marriages of men and women under the existing provisions of the 1984 Act.
- 3.18 **Clause 13** inserts a new section 19B into the 1984 Act. This permits opting-in for religious bodies which wish to participate in same sex marriages in the case of those who are detained or so ill that they cannot be moved.
- 3.19 **Clause 14** amends section 21A of the 1984 Act to expand the registrar’s powers to include provision about evidence in the case of a proposed same-sex marriage in accordance with new section 19B.
- 3.20 **Clause 15** inserts section 21B into the 1984 Act, which provides for the giving of additional evidence in certain cases in connection with same sex marriages. The new section applies in relation to any marriage intended to be solemnised at person’s place of residence if one or both of the couple are house-bound or detained (either for judicial or mental health reasons)
- 3.21 **Clause 16** amends section 29 of the 1984 Act to restrict that section’s scope to the registration of buildings for the solemnization of marriage between a man and a woman – as clause 17 inserts new provisions into the Act dealing with registration of buildings for the marriages of same sex couples.
- 3.22 **Clause 17** inserts a series of new sections (29A to 29F) into the 1984 Act which deal with registration of buildings and related matters for same sex marriages. Section 29A deals with the process for the registration of buildings for the celebration of same-sex marriages. Section 29B deals with the cancellation of a registration under section 29A.

Section 29C provides for the making of regulations by the Clerk of the Rolls to supplement sections 29A and 29B. Sections 29D, 29E and 29F deal with the registration (and the cancellation of registration) of a building which is a shared building for the purposes of the Sharing of Church Buildings Act 1986.

- 3.23 **Clause 18** inserts a new section 34A in the 1984 Act to make parallel provision in respect of void same-sex marriages to that made by the existing section 34 for opposite sex marriages.
- 3.24 **Clause 19** amends section 36 of the 1984 Act to deal with same sex marriage in reliance on a Deemster's licence where one of the couple is terminally ill.
- 3.25 **Clause 20** amends section 39 of the 1984 Act to deal with the circumstances in which a same-sex marriage celebrated in reliance upon a Deemster's licence is void.
- 3.26 **Clause 21** amends section 55 of the 1984 Act to provide that just because there has been a change in the composition of the governing authority for the purposes of giving consent to religious ceremonies for same sex marriages this does not affect the continuing validity of consent given by that governing authority.
- 3.27 **Clause 22** deals with the effect of the extension of marriage to same sex couples in the law of the Island. Generally, the marriage of a same sex couple is to be treated the same as the marriage of an opposite sex couple and Manx legislation is to be interpreted accordingly. This clause introduces Schedules 1 and 2 which contain further provision on the effect elsewhere in Manx law of the extension of the concept of marriage. The clause also makes particular provision to avoid conflict with the Measures and Canons of the Church of England<sup>7</sup> and other ecclesiastical law.
- 3.28 **Schedule 1** deals with the construction of legislation generally in the light of the extended concept.
- 3.29 **Schedule 2** contains 4 Parts. Part 1 deals with the effect on private legal instruments, Part 2 limits the scope of the presumption, sometimes expressed as "*pater est quem nuptiae demonstrat*"<sup>8</sup>, that a woman's spouse is the father of a child born to her during the subsistence of the marriage. Part 3 makes consequential amendments in the law relating to divorce and annulment of marriage (including making it clear that adultery can only occur between persons of opposing gender).

Examples in relation to adultery, etc

- A man married to a woman has an affair with another man. His wife cannot cite adultery as a fact for divorce, but can rely on unreasonable behaviour instead.

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<sup>7</sup> Canon B30 (paragraph 1) of the Canons of the Church of England states that "The Church of England affirms, according to our Lord's teaching, that marriage is in its nature a union permanent and lifelong, for better for worse, till death them do part, of one man with one woman...".

<sup>8</sup> That is, the father is the man married to the mother. Literally the phrase means "the father is the one indicated by the marriage".

- A man married to another man has an affair with a woman. His husband can cite adultery and that he finds it intolerable to live with his husband as a fact for divorce.
- A man married to another man refuses to have sexual intercourse with his husband. His husband cannot apply for annulment of the marriage because of his wilful refusal to consummate. However, after one year of marriage, he may apply for divorce because his husband has behaved in such a way that he cannot reasonably be expected to live with him.

Part 4 of Schedule 2 deals with those areas of law where, despite the widening of the concept of marriage for almost all purposes, the concept may be restricted by contrary legal provision.

3.30 **Clause 23** gives effect to **Schedule 3** which makes consequential amendments to the Sharing of Church Buildings Act 1986 and the Civil Partnership Act 2011. In particular, new section 27A is inserted into the 2011 Act to provide for the conversion into marriages of civil partnerships that were registered in the Isle of Man.

3.31 **Clause 24** provides for repeals of legislative provisions, in particular entries in Schedule 11 to the Civil Partnership Act 2011 which specifies relationships which are to be regarded for the purposes of Manx law as equivalent to civil partnerships. That Schedule originally included same sex marriages in jurisdictions throughout the world (and was later amended to include same sex marriage in Great Britain) but as a result of the amendment made by clause 7 of the Bill overseas same sex marriages will be recognised as marriages under the law of the Island. Section 21A(4) (jurisdiction regulations) of the Matrimonial Proceedings Act 2003 is incidentally repealed because it is unnecessary.

## 4. Consultation Process

4.1 Comments are invited on the proposals in the consultation document. The consultation is being conducted by the Cabinet Office. It has been decided that in this case a shorter period of consultation than the standard six weeks under the Code of Practice on Consultation<sup>9</sup> will be sufficient. There are a number of reasons for this decision:

- although a significant issue, the content of the Bill is relatively simple and straightforward;
- members of the public took the opportunity to comment on the issue of same sex marriage during the consultation on the draft Equality Bill;
- the public was notified that the consultation would be published by the Chief Ministers' news release on October 2;
- this is likely to be an issue on which people have very clear views, either for or against; and

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<sup>9</sup> <https://www.gov.im/media/622991/code-of-practice-on-consultation-2008.pdf>

- it is not considered that the proposals would have any impact on the business or third sectors.

4.2. The closing date for comments is **13 November 2015**. Please send your views in writing and preferably by e-mail to:

Ms Anne Shimmin  
Cabinet Office  
Government Office  
Bucks Road  
Douglas  
Isle of Man  
IM1 3PN

Email: [equality@gov.im](mailto:equality@gov.im)

- 4.3 However, if by reason of a disability you are unable to respond or get in touch in writing please telephone 685202.
- 4.4 When submitting your views please indicate if you are responding on behalf of an organisation.
- 4.5 To ensure that the process is transparent and consistent with the Government's Code of Conduct on Consultation responses can only be accepted if you provide your name with your response.
- 4.6 Unless specifically requested otherwise, any responses received may be published either in part or in their entirety along with the name of the person or body that has submitted the response. Please mark your response clearly if you wish your response and/or name to be kept confidential. Confidential responses will be included in any statistical summary and numbers of comments received.
- 4.7 The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to take an informed decision. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.
- 4.8 A summary of the responses will be published after the consultation has closed.

## **5. Consultation Questions**

**Question 1:** Do you agree or disagree that same sex couples should be able to get married?

**Question 2:** If the Island is to have legislation to allow same sex marriage, do you have any comments on the general principle of basing the Island's legislation on the legislation that applies in parts of the United Kingdom?

**Question 3:** Do you have any comments on the draft Marriage (Same Sex Couples) Bill that is provided in this document?

**Question 4:** Do you have any other relevant comments?

**List of direct consultees**

Tynwald Members

Clerk of Tynwald

Acting Attorney General

Isle of Man Courts of Justice

Local Authorities

Chief Officers of Government Departments, Boards and Offices

Isle of Man Chamber of Commerce

Isle of Man Trade Union Council

Isle of Man Employers Federation

Isle of Man Law Society

Positive Action Group

Liberal Vannin Party

The Manx Rainbow Association

Isle of Man Freethinkers

Churches Alive in Mann

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DEPARTMENT: Chief Secretary's Office

## IMPACT ASSESSMENT OF: Marriage (Same Sex Couples) Bill

Stage:

Version: 1:0

Date: 2 October 2015

## Related Publications:

Responsible Officer: Anne Shimmin

Email Address: anne.shimmin@gov.im

Telephone:685202

## SUMMARY: INTERVENTION AND OPTIONS

**Briefly summarise the proposal's purpose and the intended effects**

The main policy objective and purpose of the Bill is to amend the Marriage Act 1949 to allow access to marriage for same sex couples under the law of the Isle of Man. No religious organisation will be forced to conduct marriage ceremonies for same sex couples although those religious organisations which wish to do so may opt-in for the purposes of solemnisation of marriages, etc. Same sex couple will still be able to enter into a civil partnership rather than a marriage if they so wish. Same sex couples who are in an Isle of Man civil partnership may opt to convert their partnership into a marriage. The legitimate marriages of same sex couples outside the Isle of Man will be recognised.

**What are the options that have been considered**

1. Do nothing.
2. Allow civil marriage ceremonies for same sex couples and remove provision for new registrations of civil partnerships.
3. Allow civil marriage ceremonies for same sex couples and maintain the ability of same sex couples to register a civil partnership.
4. Allow civil marriage ceremonies for same sex couples and allow religious marriage ceremonies for same sex couples on a permissive basis, and also maintain the ability of same sex couples to register a civil partnership. Allow conversion of a civil partnership into a marriage.

**Option 4 is the preferred option.** This mirrors the position in England and Wales under the Marriage (Same Sex Couples) Act 2013. It provides greater fairness for same sex couples as they will be able to marry through a civil ceremony or a religious ceremony where the religious organisation in question opts to accept/recognise the marriage of same sex couples. Although this option enables religious organisations which wish to marry same sex couples to do so, those which do not wish to marry same sex couples will not be forced to do so and there will be protections for those religious organisations to ensure that any legal challenge against them will not succeed and will also deter the threat of litigation.

**Link to Government Strategic Plan****Protect the Vulnerable****Link to Department/Statutory Board/Office Aims and Objectives****Responsible Departmental Member**

Hon Allan Bell MHK, Chief Minister



**Ministerial sign off**

I have read the Impact Assessment and I am satisfied that the balance between the benefit and any costs is the right one in the circumstances.

Signed by the Responsible Minister

..... Date:

**SUMMARY: ANALYSIS AND EVIDENCE****IMPACT OF PROPOSAL****Resource Issues - Financial (including manpower)****Statement**

The Bill is based on the Marriage (Same Sex Couples) Act 2013 which applies to marriages of same sex couples in England and Wales. The situation in the Isle of Man is analogous to that in England and Wales prior to coming into force of the 2013 Act, i.e. civil partners have broadly the same rights as spouses in a marriage. The information in this impact assessment is therefore based on information in the UK Government's impact assessment for the 2013 Act.

**Likely Financial Costs [Note D]**

One Off

No costs to business have been identified. There may be some costs for religious organisations if they wish to register premises for marriages of same sex couples.

Registration procedures and guidance may need to be updated by the Civil Registry and additional regulations may be required in relation to the registration of religious buildings for same sex marriages. There will also be some familiarisation costs for Government. It is thought that these issues will be within existing resources.

There are also be some familiarisation costs for local authorities which employ registrars to conduct civil marriage ceremonies.

Average Annual (excluding one off) - Zero

**Likely Financial Benefits**

One Off

There may be some fee charged for religious organisations wishing to register buildings for the marriage of same sex couples.

If there is an initial increase in the number of same sex couples wishing to enter into marriages or civil partnerships there may be some financial benefit.

Average Annual (excluding one off) - Zero

If the proposal introduces provisions that will require another Department, Board, Office or Body to take on additional work or responsibility please ensure that they have been consulted with early on in your considerations. Please provide a brief statement as to who they are and the consultation that has taken place.

As indicated above there may be some initial work required by the Civil Registry (still legally the responsibility of the Chief Registrar, but currently delegated to the Department of Economic Development



## **EVIDENCE BASE**

Use this space to set out any further evidence, analysis and detailed narrative from which you have generated your policy options or proposal.

Marriage (Same Sex Couples) Act 2013 - <http://www.legislation.gov.uk/ukpga/2013/30/contents>

Marriage (Same Sex Couples) Act 2013 – Explanatory Notes –  
<http://www.legislation.gov.uk/ukpga/2013/30/notes/contents>

Marriage (Same Sex Couples) Act 2013 – Impact Assessment -  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236244/130820\\_MSSC\\_Act\\_Impact\\_Assessment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236244/130820_MSSC_Act_Impact_Assessment.pdf)

Marriage and Civil Partnership (Scotland) Act 2014 - <http://www.legislation.gov.uk/asp/2014/5/contents>

STATES OF JERSEY - EQUAL MARRIAGE AND PARTNERSHIP: OPTIONS PAPER REPORT – NOVEMBER 2014 - <http://www.statesassembly.gov.je/AssemblyReports/2014/R.170-2014.pdf>

STATES OF JERSEY – Proposition - SAME-SEX MARRIAGE, DIVORCE AND DISSOLUTION  
<http://www.statesassembly.gov.je/AssemblyPropositions/2015/P.77-2015.pdf>



## DRAFT

# MARRIAGE (SAME SEX COUPLES) BILL 2015

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## DRAFT

# MARRIAGE (SAME SEX COUPLES) BILL 2015

A **BILL** to make provision for the marriage of same sex couples, about gender change by married persons and civil partners, for permitting marriages according to the usages of belief organisations to be solemnized on the authority of a registrar's certificate; and for connected purposes.

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

## PART 1 – INTRODUCTORY

### 1 Short title

The short title of this Act is the Marriage (Same Sex Couples) Act 2015.

### 2 Commencement

- (1) This Act other than section 1 and this section comes into operation on such day or days as the Council of Ministers may by order appoint.
- (2) Any order under subsection (1) may include such consequential incidental, supplemental, transitional and transitory provision as the Council of Ministers considers necessary or expedient.

## PART 2 – AMENDMENT OF THE MARRIAGE ACT 1984

### 3 Marriage Act 1984 amended

The *Marriage Act 1984* is amended as follows.

### 4 Section 1 amended — marriage within prohibited degrees etc

In section 1 omit subsection (1)(a).

**5 Section 3 amended — consent to marriage**

P2013/30/Sch. 7 para 3.

In section 3(1) for “a widow or widower” substitute **☒**a surviving spouse or civil partner **☒**.

**6 Section 4A inserted — same sex marriage lawful**

After section 4 insert —

**☒ 4A Extension of marriage to same sex couples**

P2013/30/1(1) and (2), (4) and (5)

- (1) Marriage of same sex couples is lawful.
- (2) The marriage of a same sex couple may only be solemnized in accordance with Part III or Part IV.
- (3) Any duty of a member of the clergy to solemnize marriages (and any corresponding right of persons to have their marriages solemnized by members of the clergy) is not extended to same sex couples, despite the amendments made to this Act by the *Marriage (Same-Sex Couples) Act 2016*.

For the purposes of this subsection “a member of the clergy” is a clerk in Holy Orders of the Church of England.

**7 Section 4B inserted — recognition of overseas same sex marriages**

After section 4A insert—

**4B Recognition of overseas same-sex marriages**

P2013/30/10(1) and (2)

- (1) A marriage under the law of any country or territory outside the Island is not prevented from being recognised under the law of the Island only because it is the marriage of a same sex couple.
- (2) For the purposes of this section it is irrelevant whether, the law of a particular country or territory outside the Island —
  - (a) already provides for marriage of same-sex couples at the time that this section comes into operation; or
  - (b) provides for marriage of same sex couples from a later time. **☒**.

**8 Section 4C inserted — marriage according to religious rites: no compulsion to solemnize**

P2013/30/2

- (1) After section 4B insert —



#### 4C Marriage according to religious rites: no compulsion to solemnize etc

P2013/30/2

(1) A person may not be compelled by any means (including by the enforcement of a contract or a statutory or other legal requirement) to—

- (a) undertake an opt-in activity, or
- (b) refrain from undertaking an opt-out activity.

(2) A person may not be compelled by any means (including by the enforcement of a contract or a statutory or other legal requirement)—

- (a) to conduct a relevant marriage,
- (b) to be present at, carry out, or otherwise participate in, a relevant marriage, or
- (c) to consent to a relevant marriage being conducted,

where the reason for the person not doing that thing is that the relevant marriage concerns a same sex couple.

(3) In this section—

“**opt-in activity**” means an activity of the kind specified in an entry in the first column of the following table which falls to be undertaken for the purposes of any provision of this Act specified in the corresponding entry in the second column;


“**opt-out activity**” means an activity which reverses, or otherwise modifies, the effect of an opt-in activity.

Activity	Provision
Giving consent	Section 19A(3) Section 19B(2)
Applying for the registration of a building	Section 29A
Giving a certificate, giving a copy of a consent, or certifying any matter	Section 29A(3) Section 29B(2).

(4) In this section —

“**person**”—

- (a) includes a religious organisation;
- (b) does not include a registrar or the Chief Registrar;

“**relevant marriage**” means a marriage of a same sex couple solemnized in accordance with section 19A and 19B (marriage in a place of worship or in another place according to religious rites or usages), including any ceremony forming part of, or connected with, the solemnization of such a marriage. .

## 9 Section 5 amended

In section 5(b) (which concerns the authorisation of a marriage by a special licence) omit “time or”.

## 10 Section 17 substituted – void marriages

For section 17 substitute—

### **17 Void marriages**

- (1) A marriage is void in any of the following cases.
- (2) Case A is where any persons knowingly and wilfully intermarry according to the rites of the Church of England (otherwise than by a special licence)—
  - (a) except in the case of a marriage under section 19(1)(h) in any place other than a church or other building in which banns may be published;
  - (b) without banns having been duly published, a common licence having been obtained or certificates having been duly issued by a registrar to whom due notice of marriage has been given; or
  - (c) on the authority of—
    - (i) a publication of banns which is void by virtue of section 3(7) or section 11(2),
    - (ii) a common licence which is void by virtue of section 13(4);
    - (ii) a registrar’s certificate which is void by virtue of section 26(2);
- (3) Case B is where any persons knowingly and wilfully consent to, or acquiesce in, the solemnization of a Church of England marriage between them by who is not in Holy Orders.
- (4) Case C is where any persons of the same sex knowingly and wilfully consent to or acquiesce in a Church of England marriage between them.
- (5) In this section “Church of England marriage” means a marriage according to the rites of the Church of England. **22**.

## 11 Section 19 substituted – marriage for which no opt-in necessary


P2013/30/3

In Part III for section 19 substitute—

### **19 Marriage of a man and a woman; marriage of same sex couples**

**for which no opt-in necessary**

P1949/776/26 (as substituted by P2013/30/3)

- (1) The following marriages may be solemnized on the authority of a certificate of a registrar—
- (a) a marriage of a man and a woman, in a registered building, according to such form and ceremony as the persons to be married see fit to adopt;
  - (b) a marriage of any couple in the office of a registrar;
  - (c) a marriage of any couple in a place approved by the Chief Registrar;
  - (d) a marriage of any couple in any other place in the Island but only with the consent of the owner of the place;
  - (e) a marriage of any couple in (or over) the Island or its territorial waters aboard an approved aircraft, vehicle or vessel; or
  - (f) a marriage of any couple in (or over) the Island or its territorial waters aboard an aircraft, vehicle or vessel which is not approved, but only with the consent of the owner of the aircraft, vehicle or vessel;
  - (g) a qualifying residential marriage;
  - (h) a marriage of a man and a woman according to the rites of the Church of England in any church or chapel in which banns of matrimony may be published.
- (2) A marriage may only take place in accordance with paragraphs (c) to (f) of subsection (1) with the consent of the Chief Registrar which must be given or withheld in accordance with guidance under subsection (3).
- (3) The Clerk of the Rolls must issue guidance about the factors and circumstances to be taken into account by the Chief Registrar in determining whether to give consent under subsection (2).
- (4) In this section "**qualifying residential marriage**" means—
- (a) the marriage of a man and a woman one or each of whom is house-bound or a detained person, at the usual place of residence of the house-bound or detained person or persons, or
  - (b) the marriage of a same sex couple (other than a marriage according to the rites of the Church of England or other religious rites or usages), one or each of whom is house-bound or a detained person, at the usual place of residence of the house-bound or detained person or persons. .

## 12 Section 19A inserted – opting-in and marriage in places of worship

After section 19 (marriages which may be solemnized on authority of registrar’s certificate) insert—

### **19A Opt-in to marriage of same sex couples: places of worship**

P1949/76/26A

- (1) A marriage of a same sex couple in an appropriately registered building according to such form and ceremony as the persons to be married see fit to adopt may be solemnized on the authority of a certificate of a registrar.
- (2) For the purposes of this section “**appropriately registered building**” means a building which has been registered under section 29A.
- (3) An application for registration of a building under section 29A may not be made unless the relevant governing authority has given written consent to marriages of same sex couples.
- (4) For that purpose, in relation to a building—
 

“**relevant governing authority**” means the person or persons recognised by the members of the relevant religious organisation as competent for the purpose of giving consent for the purposes of this section;

“**relevant religious organisation**” means the religious organisation for whose religious purposes the building is used.
- (5) Nothing in this section is to be taken to relate or have any reference to marriages solemnized according to the rites of the Church of England.
- (6) This section is subject (in particular) to sections 29D to 29F (which modify this Act in relation to the registration of shared buildings within the meaning of the Sharing of Church Buildings Act 1969 (of Parliament) as it applies in the Island) and to regulations made under sections 29 to 29C as they apply to such buildings. **22**.

## 13 Section 19B inserted – opt-in for other religious ceremonies

P2013/30/5

After section 19A (inserted by section 7) insert —

### **19B Opt-in to marriage of same sex couples: other religious ceremonies**

P1949/76/26A (1), (2) and (6) to (8)

- (1) A marriage may be solemnized on the authority of a registrar’s certificate in the circumstances set out in subsection (2).

- (2) The circumstances are that—
- (a) the marriage is of a same sex couple according to religious rites or usages (other than the rites of the Church of England),
  - (b) one or each of the couple is house-bound or a detained person,
  - (c) the marriage is at the usual place of residence of the house-bound or detained person or persons, and
  - (d) the relevant governing authority has given written consent to marriages of same sex couples according to those religious rites or usages.

(3) For that purpose—

“**relevant governing authority**” means the person or persons recognised by the members of the relevant religious organisation as competent for the purpose of giving consent for the purposes of this section;

“**relevant religious organisation**” means the religious organisation according to whose rites or usages the marriage is to be solemnized. **22**.

#### 14 Section 21A amended — power to require evidence

- (1) Section 21A is amended as follows.
- (2) After subsection (1) insert —

**22** (1A) In the case of an intended marriage to which section 19B would apply, the registrar to whom notice of the marriage is given may require the relevant governing authority to produce evidence relating to the consent mentioned in section 19B(2)(d). **22**.

#### 15 Section 21B inserted — additional evidence required

After section 21A (power to require evidence) insert —

##### **22** 21B Additional evidence required in certain cases

P1949/76/27A

- (1) This section applies in relation to any marriage intended to be solemnized at a person's residence in pursuance of section 19(1)(g) or 19B(2) of this Act, and in the following provisions of this section that person is referred to as “**the relevant person**”.
- (2) Where the relevant person is not a detained person, each notice of marriage required by section 20 must be accompanied by a medical statement relating to that person made not more than fourteen days before the date on which the notice is given.

(3) Where the relevant person is a detained person, each notice of marriage required by section 20 of this Act must be accompanied by a statement made in the prescribed form by the responsible authority not more than twenty-one days before the date on which notice of the marriage is given under section 20—

- (a) identifying the establishment where the person is detained; and
- (b) stating that the responsible authority has no objection to that establishment being specified in the notice of marriage as the place where that marriage is to be solemnized.

(4) Each person who gives notice of the marriage to the registrar in accordance with section 20 must give the registrar the prescribed particulars, in the prescribed form, of the person by or before whom the marriage is intended to be solemnized.

(5) The fact that a registrar has received a statement under subsection (2) or (as the case may be) (3) of this section must be entered in the marriage notice book together with the particulars given in the notice of marriage and any such statement together with the form received under subsection (4) of this section must be filed and kept with the records of the registrar's office.

(6) In this section—

**"medical statement"**, in relation to any person, means a statement made in the prescribed form by a registered medical practitioner that in that practitioner's opinion at the time the statement is made—

- (a) by reason of illness or disability, he or she ought not to move or be moved from the place where he or she is at that time, and
- (b) it is likely that it will be the case for at least the following three months that by reason of the illness or disability he or she ought not to move or be moved from that place; and

**"responsible authority"** means—

- (a) if the person is detained in a hospital (within the meaning of Part II of the *Mental Health Act 1998*), the managers of that hospital (within the meaning of section 138(1) of that Act); or
- (b) if the person is detained in an institution or other place to which the *Custody Act 1995* applies, the governor or other officer for the time being in charge of that institution or other place. **22**.

**16 Section 29 amended — registration of buildings: marriage of a man and a woman**

- (1) Section 29 is amended as follows.
- (2) After subsection (1) insert —
  - █(1A) A reference in this section to the solemnization of marriage is a reference to the solemnization of marriage of a man and a woman. █.
- (3) In consequence of the amendment made by subsection (2) for the heading to the section substitute —

**█ 29 Registration of buildings: marriage of a man and a woman █.**

**17 Sections 29A to 29F inserted — registration, etc., of buildings for same sex marriages**

After section 29 (registration of buildings) insert —

**█ 29A Registration of buildings: marriage of same sex couples**

P1949/76/43A

- (1) Any proprietor or trustee of a building used as a place of religious worship may apply to the Chief Registrar for the building to be registered under this section for the solemnization of marriages of same sex couples.
- (2) Any application for registration of a building under this section is to be made—
  - (a) by a proprietor or trustee of the building;
  - (b) to the Chief Registrar.
- (3) An application for registration of a building under this section must be accompanied by—
  - (a) a certificate, given by the applicant and dated not earlier than one month before the making of the application, that the persons who are the relevant governing authority in relation to the building have given written consent to marriages of same sex couples as mentioned in section 19A(3),
  - (b) a copy of that consent, and
  - (c) the prescribed fee.
- (4) If the building is already registered under section 29, the application must be accompanied by the Chief Registrar's certificate under section 29(3), and if it is not so registered the

application must be accompanied by the signed certificate mentioned in section 29(2).

- (5) If satisfied by the evidence furnished under subsections (3) and (4) that it is proper to do so, the Chief Registrar must—
- (a) give a certificate of the registration signed by the Chief Registrar to the person who made the application under subsection (1); and
  - (b) give public notice of the registration of the building by advertisement in some newspaper published and circulating in the Island.
- (6) A building may be registered for the solemnization of marriages under this section whether it is a separate building or forms part of another building.

### **29B Cancellation of registration under section 29A**

P1949/76/43C

- (1) The registration of a building under section 29A may be cancelled under this section.
- (2) Any application under this section is to be made—
- (a) by a proprietor or trustee of the building;
  - (b) to the Chief Registrar.
- (3) The Chief Registrar must then cancel the registration of the building.
- (4) This section is subject (in particular) to sections 29E and 29F (registration of shared buildings for marriage of same sex couples).

### **29C Regulations about section 29 to 29B**

P1949/76/43D

- (1) The Clerk of the Rolls may make regulations about the procedures to be followed and the fees payable—
- (a) on registration applications; and
  - (b) on cancellation applications.
- (2) The Clerk of the Rolls may make —
- (a) regulations modifying the application of section 29 in relation to buildings that are already registered under section 29A;
  - (b) regulations about cases where a person makes applications under sections 29 and 29A, or gives or certifies authorisations under section 29A, in respect of the same



building at the same time (including provision modifying any requirement imposed by any of those sections or by regulations under subsection (1) of this section).

(3) In this section—

“**cancellation application**” means an application under section 29B for the cancellation of the registration of a building;

“**registration application**” means an application under section 29A for the registration of a building. **22**.

*Registration of shared buildings for marriages of same sex couples*

## 29D Registration of church buildings subject to sharing agreements for same sex marriages

P1949/76/44A

- (1) This section applies to a registration application relating to a building that is subject to a sharing agreement, within the meaning of the Sharing of Church Buildings Act 1969 (of Parliament) as that Act applies in the Island by virtue of the *Sharing of Church Buildings Act 1986*.
- (2) The registration application must be made in accordance with 29A (as read with section 19A(3)).
- (3) But those provisions have effect subject to the following provisions of this section.
- (4) Each of the sharing churches is a relevant religious organisation for the purposes of section 19A(3).
- (5) A consent given under section 19A(3) (a “**consent to marriages of same sex couples**”) by the relevant governing authority of any of the sharing churches is therefore sufficient for the registration application to be made in compliance with section 19A (and references to the consent of the relevant governing authority in section 29A are to be read accordingly).
- (6) But the registration application may not be made unless the relevant governing authorities of each of the sharing churches (other than those which have given consents to marriages of same sex couples) have given a separate written consent to the use of the shared building for the solemnization of marriages of same sex couples (a “consent to use”).
- (7) The registration application must also be accompanied by—
  - (a) a certificate, given by the applicant and dated not more than one month before the making of the application, that

- the relevant governing authorities mentioned in subsection (6) have given written consents to use, and
- (b) copies of those consents.
- (8) The Chief Registrar must not register the shared building unless and the requirements of section 29A have been complied with.
- (9) In this section and in section 29E —
- (a) “**the 1969 Act**” means the Sharing of Church Buildings Act 1969 (of Parliament) as that Act applies in the Island by virtue of the *Sharing of Church Buildings Act 1986*.
- (b) terms defined in the 1969 Act have the same meaning as they have in that Act.
- (10) The Clerk of the Rolls may make regulations containing such provision supplementing this section as the Clerk of the Rolls thinks appropriate.

## 29E Church buildings subject to sharing agreements: cancellation of registration under section 29A

P1949/76/44B

- (1) This section applies to a cancellation application relating to a building that is subject to a sharing agreement.
- (2) The cancellation application must be made in accordance with section 29B.
- (3) But section 29B has effect subject to the following provisions of this section.
- (4) The cancellation application may be made either —
- (a) by a proprietor or trustee of the building, or
- (b) by the relevant governing authority of any of the sharing churches.
- (5) For that purpose, in relation to a sharing Church, “**relevant governing authority**” means the person or persons recognised by the members of the sharing Church as competent for the purpose of making an application under section 29B in the circumstances to which this section applies.
- (6) In a case where the cancellation application is made by a relevant governing authority in accordance with subsection (4)(b) the application must be accompanied by a certificate, given by persons making the application, that they are the relevant governing authority of one of the sharing Churches.
- (7) The Clerk of the Rolls may make regulations containing such provision supplementing this section as the Clerk of the Rolls thinks appropriate.

**29F Other shared places of worship: registration and cancellation**

P1949/76/44C

- (1) The Clerk of the Rolls may make regulations about —
  - (a) registration applications relating to other shared places of worship;
  - (b) cancellation applications relating to other shared places of worship;
  - (c) the sharing churches' use of other places of worship (where they are registered under section 29A) for the solemnization of marriages of same sex couples.
- (2) Regulations under subsection (1)(b) may make provision about the procedures to be followed on registration and cancellation applications.
- (3) In this section —
  - (a) “other shared place of worship” means a shared building to which paragraphs 2 and 3 do not apply because the building is neither —
    - (i) subject to a sharing agreement, nor
    - (ii) used for interdenominational worship; and
  - (b) “used for interdenominational worship” means used in as mentioned in section 6(4) of the Sharing of Church Buildings Act 1969 (of Parliament) as that provision applies in the Island.

**18 Section 34A inserted — void same sex marriages**

After section 34 insert —

**34A Void marriages — additional provision about same sex couples**

- (1) If a same sex couple knowingly and wilfully intermarries under the provisions of this Part of this Act in the absence of the required consent, the marriage shall be void.
- (2) In this section, in relation to a marriage of a same sex couple, “required consent” means consent under —
  - (a) section 19A(3), in a case where section 19A applies to the marriage but section 29D does not;
  - (b) section 19A(3) and section 29D(6), in a case where section 19A and section 29D apply to the marriage;
  - (c) section 19A(3) and under any regulations made under section 29E that require the consent to use of a building for the solemnization of marriages of same sex couples, in a

- case where section 19A and section 29E apply to the marriage;
- (d) section 19B(2)(d), in a case where that section applies to the marriage.

## 19 Section 36 amended – opt-in: death-bed marriages

P2013/30/7

- (1) Section 36 (marriages solemnized on authority of Deemster’s licence) is amended as follows.
- (2) In subsection (1), after “certificate of a registrar” insert—
- ☐, other than marriage between a man and a woman according to the rites and ceremonies of the Church of England, ☐.
- (3) Insert at the end —
- ☐(3) A marriage of a same sex couple according to religious rites or usages may not be solemnized in accordance with this Part of this Act unless the relevant governing authority has given written consent to marriages of same sex couples according to those religious rites or usages.
- (4) For that purpose—
- “**relevant governing authority**” means the person or persons recognised by the members of the relevant religious organisation as competent for the purpose of giving consent for the purposes of this section;
- “**relevant religious organisation**” means the religious organisation according to whose rites or usages the marriage is to be solemnized. ☐.

## 20 Section 39 amended – validity of marriages

In section 39 after subsection (2) insert —

- ☐(2A) If a same sex couple knowingly and wilfully intermarries under the provisions of this Part in the absence of the required consent, the marriage shall be void.

Here “required consent means the consent referred to in section 36(3). ☐.

## 21 Section 55 amended – interpretation etc.

- (1) Section 55 is amended as follows.
- (2) Renumber the existing text as subsection (1).
- (3) In subsection (1), in the definition of “registered building” at the end insert ☐ or 29A ☐.

- (4) After subsection (1) insert —
- (2) If for the purpose of any provision of this Act, a relevant governing authority has given written consent to marriages of same sex couples, the validity of that consent is not affected only because there is a change in the person or persons constituting the relevant governing authority.
- (5) In consequence for the section heading substitute — **Interpretation etc.**

## 22 Effect of extension of marriage

- (1) In the law of the Island, marriage has the same effect in relation to same sex couples as it has in relation to opposite sex couples.
- (2) Manx legislation (whenever passed or made) has effect in accordance with subsection (1).
- (3) Schedule 1 (interpretation of legislation) has effect.
- (4) Schedule 2 (effect of extension of marriage: further provision) has effect.
- (5) For provision about limitations on the effects of subsections (1) and (2) and Schedule 1, see Part 4 of Schedule 2.
- (6) Subsections (1) and (2) and Schedule 1 do not have any effect in relation to—
- (a) Measures and Canons of the Church of England (whenever passed or made);
  - (b) Measures of the Diocesan Synod (whenever passed or made);
  - (c) subordinate legislation (whenever made) made under a Measure or Canon of the Church of England or a Measure of the Diocesan Synod; or
  - (d) other ecclesiastical law (whether or not contained in Manx legislation, and, if contained in Manx legislation, whenever passed or made).
- (7) In Schedules 1 and 2 —
- “existing Manx legislation”** means—
- (a) in the case of Manx legislation that is primary legislation, legislation passed before the end of the Session in which this Act is passed (excluding this Act), or
  - (b) in the case of Manx legislation that is subordinate legislation, legislation made on or before the day on which this Act is passed (excluding legislation made under this Act);

**“new Manx legislation”** means—

- (a) in the case of Manx legislation that is primary legislation, legislation passed after the end of the Session in which this Act is passed, or
- (b) in the case of Manx legislation that is subordinate legislation, legislation made after the day on which this Act is passed.

## 23 Consequential amendments

Schedule 3 (consequential amendments) has effect.

## 24 Repeals

- (1) Section 21A(4) of *the Matrimonial Proceedings Act 2003* is repealed.
- (2) In the table comprised in Schedule 11 to the *Civil Partnership Act 2011* (overseas relationships which are treated as corresponding to civil partnership) omit the following entries.

Belgium	marriage
Brazil	marriage
Canada	marriage
Denmark	marriage
Iceland	marriage
Mexico: Mexico City Federal District	marriage
Netherlands	marriage
Norway	marriage
Portugal	marriage
South Africa	marriage
Spain	marriage
Sweden	marriage
United Kingdom	marriage
United States of America: California	marriage
United States of America: Connecticut	Marriage
United States of America: District of Columbia	Marriage
United States of America: Iowa	Marriage
United States of America: Massachusetts	Marriage
United States of America: New Hampshire	Marriage

United States of America: New York	Marriage
United States of America: Vermont	Marriage







## Schedule 1

## INTERPRETATION OF LEGISLATION

[Section 22(3)]

**PART 1 – EXISTING MANX LEGISLATION****1 Construction of references to marriages, etc.**

- (1) In existing Manx legislation—
  - (a) a reference to marriage is to be read as including a reference to marriage of a same sex couple;
  - (b) a reference to a married couple is to be read as including a reference to a married same sex couple; and
  - (c) a reference to a person who is married is to be read as including a reference to a person who is married to a person of the same sex.
- (2) If sub-paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a marriage that has ended, or a reference to a person whose marriage has ended) is to be read accordingly.
- (3) For the purposes of sub-paragraphs (1) and (2) it does not matter how a reference is expressed.

**2 Construction of references to couples and persons who are not married but living together as if they were**

- (1) In existing Manx legislation—
  - (a) a reference to persons who are not married but are living together as a married couple is to be read as including a reference to a same sex couple who are not married but are living together as a married couple;
  - (b) a reference to a person who is living with another person as if they were married is to be read as including a reference to a person who is living with another person of the same sex as if they were married.
- (2) If sub-paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to persons formerly living together as a married couple) is to be read accordingly.
- (3) For the purposes of sub-paragraphs (1) and (2) it does not matter how a reference is expressed.

### 3 Differential treatment of heterosexual couples and same sex couples

- (1) This paragraph applies to existing Manx legislation which deals differently with —
  - (a) a man and a woman living together as if married, and
  - (b) two men, or two women, living together as if civil partners.
- (2) If two men, or two women, are living together as if married, that legislation applies to them in the way that it would apply to them if they were living together as civil partners.

### 4 Relationship with general rules of construction in section 0

This Part of this Schedule does not limit section 22(1) or (2).

## PART 2 — NEW MANX LEGISLATION

### 5 Construction of new Manx legislation

- (1) This paragraph applies to provision made by—
  - (a) this Act and any subordinate legislation made under it, or
  - (b) new Manx legislation,including any such provision which amends existing Manx legislation.
- (2) In the provision mentioned in subparagraph (1) the following expressions have the meanings given—
  - (a) “**husband**” includes a man who is married to another man;
  - (b) “**wife**” includes a woman who is married to another woman;
  - (c) “**widower**” includes a man whose marriage to another man ended with the other man's death;
  - (d) “**widow**” includes a woman whose marriage to another woman ended with the other woman's death;and related expressions are to be construed accordingly.
- (3) A reference to marriage of same sex couples is a reference to—
  - (a) marriage between two men, and
  - (b) marriage between two women.
- (4) A reference to a marriage of a same sex couple is a reference to—
  - (a) a marriage between two men, or
  - (b) a marriage between two women.
- (5) A reference to a same sex couple who are not married but are living together as a married couple is a reference to—

- (a) two men who are not married but are living together as a married couple, or
  - (b) two women who are not married but are living together as a married couple.
- (6) This Part of this Schedule does not limit section 22(1) or (2).

**Schedule 2**

**EFFECT OF EXTENSION OF MARRIAGE – FURTHER PROVISION**

[Section 22(4)]

**PART 1 – PRIVATE LEGAL INSTRUMENTS**

**1 Existing instruments**

- (1) Section 22 does not alter the effect of any private legal instrument made before that section comes into force.
- (2) In this paragraph “private legal instrument” includes—
  - (a) a will,
  - (b) an instrument (including a private Act) which settles property,
  - (c) an instrument (including a private Act) which provides for the use, disposal or devolution of property, and
  - (d) an instrument (including a private Act) which—
    - (i) establishes a body, or
    - (ii) regulates the purposes and administration of a body, (whether the body is incorporated or not and whether it is charitable or not);

but (with the exception of the kinds of private Act mentioned above) it does not include Manx legislation.

**PART 2 – PRESUMPTION OF PARENTAGE OF CHILD BORN TO A MARRIED WOMAN**

**2 Common law presumption**

- (1) For the sake of clarity, section 22 does not extend the common law presumption that a child born to a woman during her marriage is also the child of her husband.
- (2) Accordingly, where a child is born to a woman during her marriage to another woman, that presumption is of no relevance in ascertaining the child's parentage.

**PART 3 — DIVORCE AND ANNULMENT OF MARRIAGE**

P2013/30/Sch4 Pt 4

**3 Matrimonial Proceedings Act 2003 amended**

The *Matrimonial Proceedings Act 2003* is amended in accordance with this Part of this Schedule.

**4 Divorce on breakdown of marriage — s. 2 amended**

In section 2 at the end insert —

▣(5) Only conduct between the respondent and a person of the opposite sex can constitute adultery for the purposes of this section. ▣.

**5 Grounds on which a marriage is voidable — s. 13 amended**

P2013/30/Sch4, para 4

- (1) Section 13 is amended as follows.
- (2) Renumber the text of the existing provision as subsection (1).
- (3) After subsection (1) insert —
 

▣(2) Paragraphs (a) and (b) of subsection (1) do not apply to the marriage of a same sex couple. ▣.

**6 Jurisdiction: further provisions — s. 21 amended**

P2013/30/Sch4, para 6

- (1) Section 21 is amended as follows.
- (2) Renumber the existing subsection (5A) as (5B).
- (3) After subsection (5) insert —
 

▣(5A) Schedule A1 (jurisdiction in relation to the marriage of same sex couples) has effect). ▣.
- (4) In subsection (6) after “the Island” insert —
 

▣(whether the proceedings are in respect of the marriage of a man and a woman or the marriage of a same sex couple) ▣.

**7 Insertion of Schedule A1**

P2013/30/Sch4 para 8

Before Schedule 1 insert —

**▣ SCHEDULE A1****JURISDICTION IN RELATION TO MARRIAGE OF SAME SEX COUPLES**

[Section 21(5A)]

## 1 Introduction

This Schedule has effect, with respect to the jurisdiction of the court to entertain any of the following proceedings in relation to a marriage of a same sex couple—

- (a) proceedings for divorce, judicial separation or nullity of marriage;
- (b) proceedings for death to be presumed and a marriage to be dissolved on the ground that one of the couple is dead; and
- (c) proceedings for a declaration of validity.

## 2 Divorce, judicial separation or annulment

(1) The Court has jurisdiction to entertain proceedings for divorce or judicial separation if (and only if)—

- (a) the Court has jurisdiction under regulations under paragraph 5,
- (b) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5 and either of the married same sex couple is domiciled in the Island on the date when the proceedings are begun, or
- (c) the following conditions are met—
  - (i) the two people concerned married each other under the law of the Island,
  - (ii) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5, and
  - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

(2) The Court has jurisdiction to entertain proceedings for nullity of marriage if (and only if)—

- (a) the Court has jurisdiction under regulations under paragraph 5,
- (b) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5 and either of the married same sex couple—
  - (i) is domiciled in the Island on the date when the proceedings are begun, or
  - (ii) died before that date and either was at death domiciled in the Island or had been habitually resident in the Island throughout the period of 1 year ending with the date of death, or

- (c) the following conditions are met—
  - (i) the two people concerned married each other under the law of the Island,
  - (ii) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5, and
  - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

- (3) At any time when proceedings are pending in respect of which the court has jurisdiction by virtue of subparagraph (1) or (2) (or this subparagraph), the court also has jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, even though that jurisdiction would not be exercisable under subsection (1) or (2).

### 3 Presumption of death and dissolution of marriage

The court has jurisdiction to entertain proceedings for death to be presumed and a marriage to be dissolved if (and only if)—

- (a) the applicant is domiciled in England and Wales on the date when the proceedings are begun,
- (b) the applicant was habitually resident in England and Wales throughout the period of 1 year ending with that date, or
- (c) the two people concerned married each other under the law of England and Wales and it appears to the court to be in the interests of justice to assume jurisdiction in the case.

### 4 Declaration of validity

The Court has jurisdiction to entertain an application for a declaration of validity if (and only if)—


- (a) either of the parties to the marriage to which the application relates—
  - (i) is domiciled in the Island on the date of the application,
  - (ii) has been habitually resident in the Island throughout the period of 1 year ending with that date, or
  - (iii) died before that date and either was at death domiciled in the Island or had been habitually resident in the Island throughout the period of 1 year ending with the date of death, or

- (b) the two people concerned married each other under the law of the Island and it appears to the court to be in the interests of justice to assume jurisdiction in the case.

## 5 Power to make provision corresponding to EC Regulation 2201/2003

- (1) The Council of Ministers may by regulations make provision—
  - (a) as to the jurisdiction of the Court in proceedings for the divorce of, or annulment of the marriage of, a same sex couple or for judicial separation of a married same sex couple where one of the couple—
    - (i) is or has been habitually resident in a member State,
    - (ii) is a national of a member State, or
    - (iii) is domiciled in the Island, and
  - (b) as to the recognition in the Island of any judgment of a court of a member State which orders the divorce of, or annulment of a marriage of, a same sex couple or the judicial separation of a married same sex couple.
- (2) The regulations may in particular make provision corresponding in the European Union to that made by Council Regulation (EC) No 2201/2003 of 27th November 2003 in relation to jurisdiction and the recognition and enforcement of judgments in matrimonial matters.
- (3) The regulations may make provision under sub-paragraph (1)(b) which applies even if the date of the divorce, annulment or judicial separation is earlier than the date on which this paragraph comes into operation.
- (4) *Regulations under this paragraph may come into operation only if approved by Tynwald.*

## 6 Interpretation

- In this Schedule “**declaration of validity**” means—
  - (a) a declaration as to the validity of a marriage,
  - (b) a declaration as to the subsistence of a marriage, or
  - (c) a declaration as to the validity of a divorce, annulment or judicial separation obtained outside the Island in respect of a marriage. .

## 8 Schedule 1 amended

P2013/30/Sch 4, para 9

- (1) Schedule 1 (staying matrimonial proceedings) is amended as follows.



- (2) In paragraph 1(1) in the definition of “matrimonial proceedings” after “kinds” insert **“and (whether relating to a marriage of a man and a woman or a marriage of a same sex couple)”**.

## **PART 4 – PROVISIONS WHICH LIMIT EQUIVALENCE OF ALL MARRIAGES ETC**

### **9 Contrary provision**

P2013/30/Sch4, para 27

- (1) In this paragraph “the relevant provisions” are—
- (a) section 22(1) and (2) and Schedule 2 (equivalence of all marriages in law); and
  - (b) section 27A of the *Civil Partnership Act 2011*.
- (2) The relevant provisions are subject to—
- (a) the preceding provisions of this Schedule,
  - (b) any order under section 1 of the *Pension Schemes Act 1995* or section 1 of the *Social Security Act 2000* making provision corresponding to Part 5 or Part 6 of Schedule 4 to the Marriage (Same Sex Couples) Act 2013 (of Parliament) (c.30) or regulations under a provision applied by an order making such provision; and
  - (c) any order under sub-paragraph (4).
- (3) The relevant provisions are subject to any other contrary provision made by—
- (a) the other provisions of this Act,
  - (b) any other subordinate legislation made under this Act, and
  - (c) any new Manx legislation,
- including any such contrary provision contained in amendments of existing Manx legislation.
- (4) The Council of Ministers may by order—
- (a) provide that a relevant provision has effect subject to provision made by the order, or
  - (b) specify cases in which a relevant provision does not apply.
- (5) An order under sub-paragraph (4) has effect only if approved by Tynwald.

## Schedule 3

## CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

[Section 23]

**1 Sharing of Church Buildings Act 1986 amended**

The *Sharing of Church Buildings Act 1986* (“the 1986 Act”) is amended as follows.

**2 Schedule 1 amended**

- (1) Schedule 1 (which specifies exemptions, adaptations and modifications and adaptations subject to which the Sharing of Church Buildings Act 1969 (of Parliament) applies in the Island) is amended as follows.
- (2) In paragraph 5—
  - (a) in subparagraph (1) in the substituted section 6(1)—
    - (i) after “(an Act of Tynwald)” insert **“the 1984 Act”**; and
    - (ii) after “registration of buildings” insert **“for the solemnization of a marriage between a man and a woman”**.
  - (b) after that subparagraph insert—
 

<b>“(1A) After section 6(1) insert—</b>	<b>“(1A) Sections 29A to 29F of the 1984 Act make provision about the registration of buildings for same sex marriages: see in particular sections 29E and 29F in connection with such marriages in buildings subject to sharing agreements.”</b>
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  - (c) in subparagraph (2)—
    - (i) in the opening words for “said of Act of 1984” substitute **“the 1984 Act”**; and
    - (ii) in paragraph (b) for “the said Act” substitute **“the 1984 Act”**.
- (3) For paragraph 13(a) substitute—
 

<b>“(a) in the heading—</b>	<b>(i) for “1949” substitute “1984 (an Act of Tynwald)”</b> ; and
	<b>(ii) after “registration of buildings” insert “for the solemnization of marriage between a man and a woman”</b> .

### 3 Schedule 2 amended

- (1) Schedule 2 (the text of the 1969 Act as it applies in the Island) is amended as follows.
- (2) In the text of section 6 of the 1969 Act as applied to the Island (solemnization of marriages in shared buildings) —
  - (a) in subsection (1) —
    - (i) after “(an Act of Tynwald)” insert **“the 1984 Act”**; and
    - (ii) after “registration of buildings” insert **“for the solemnization of a marriage between a man and a woman”**;
  - (b) after subsection (1) insert—
 

**“(1A) Sections 29A to 29F of the 1984 Act make provision about the registration of buildings for same sex marriages: see in particular sections 29E and 29F in connection with such marriages in buildings subject to sharing agreements.”**
  - (c) in subsection (2) —
    - (i) in the opening words for “the said Act of 1984” substitute **“the 1984 Act”**; and
    - (ii) in paragraph (b) for “the said Act” substitute **“the 1984 Act”**.
- (3) In the heading to Schedule 1 of the 1969 Act as applied to the Island—
  - (a) for “1949” substitute **“1984 (an Act of Tynwald)”**; and
  - (b) after “registration of buildings” insert **“for the solemnization of marriage between a man and a woman”**.

### 4 Civil Partnership Act 2011 amended

P2013/30/9

After section 27 of the *Civil Partnership Act 2011* (and before the cross-heading preceding section 28) insert —

**“CONVERSION OF ISLE OF MAN CIVIL PARTNERSHIPS TO MARRIAGES**

#### **27A Conversion of civil partnership into marriage**

- (1) The parties to an Isle of Man civil partnership may convert their civil partnership into a marriage under a procedure established by regulations made by the Clerk of the Rolls.
- (2) Regulations under this section may in particular make—

- (a) provision about the making by the parties to a civil partnership of an application to convert their civil partnership into a marriage;
  - (b) provision about the information to be provided in support of an application to convert;
  - (c) provision about the making of declarations in support of an application to convert;
  - (d) provision for persons who have made an application to convert to appear before any person or attend at any place;
  - (e) provision conferring functions in connection with applications to convert on relevant officials, the Clerk of the Rolls, or any other persons;
  - (f) provision for fees, of such amounts as are specified in or determined in accordance with the regulations, to be payable in respect of—
    - (i) the making of an application to convert;
    - (ii) the exercise of any function conferred by virtue of paragraph (e).
- (3) Functions conferred by virtue of paragraph (e) of subsection (3) may include functions relating to—
- (a) the recording of information on the conversion of civil partnerships;
  - (b) the issuing of certified copies of any information recorded;
  - (c) the carrying out, on request, of searches of any information recorded and the provision, on request, of records of any information recorded (otherwise than in the form of certified copies);
  - (d) the conducting of services or ceremonies (other than religious services or ceremonies) following the conversion of a civil partnership.
- (4) If a civil partnership is converted into a marriage under this section—
- (a) the civil partnership ends on the conversion, and
  - (b) the resulting marriage is to be treated as having subsisted since the date the civil partnership was formed.
- (5) In this section—
- “Isle of Man civil partnership”** means a civil partnership which is formed by two people registering as civil partners of each other in the Island in accordance with this Part;
- “relevant official”** means—
- (a) the Chief Registrar;

(b) a registrar. .



**Isle of Man**  
**Government**

*Reiltys Ellan Vannin*



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