



## **MARRIAGE (SAME SEX COUPLES) BILL 2016**

### **EXPLANATORY NOTES**

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon Allan Bell MHK*

#### **Introduction**

1. These explanatory notes relate to the Marriage (Same Sex Couples) Bill 2016. They have been prepared by the Cabinet Office in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

#### **Background**

3. Under the current law, a marriage can only be validly contracted in the Island between a man and a woman<sup>1</sup>. Marriage law in the Island is based on where the marriage ceremony takes place. The Marriage Act 1984 ("the 1984 Act") sets out that a marriage can be solemnized (solemnization is the legal ceremony which gives effect to the marriage) either in religious buildings, through a religious ceremony, or on secular (non-religious) premises, through a civil ceremony. For historical reasons, the law makes particular provision relating to marriage according to the rites and ceremonies of the Church of England.
4. Same sex couples may register a civil partnership under the Civil Partnership Act 2011. A civil partnership is only available to same sex couples and can only be conducted through a civil ceremony, although this may be held in a religious building.
5. The position of the Church of England is different from that of other religious organisations for three main reasons:
  - as the established Church, its Canons (church laws) form part of the law of the Island;
  - as the established Church, it can amend or repeal primary legislation through a Measure passed by its Synod, provided the Measure is subsequently approved by Tynwald and receives Royal Assent;
  - its clergy are under a common law duty to marry a parishioner in his or her parish church.
6. In March 2012 the UK Government Equalities Office published a consultation on "Equal Civil Marriage", which looked at how to enable same sex couples to marry. The consultation made clear that no religious organisation or its ministers would be forced

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<sup>1</sup> But a marriage contracted elsewhere between two persons of the same sex who were not domiciled in the Island would be recognised as a civil partnership.

to conduct marriage ceremonies for same sex couples. The consultation received just over 228,000 responses, together with 19 petitions. This was the largest response ever received to a UK Government consultation, highlighting that this is an important issue to many people. In December 2012 the UK Government confirmed that it would proceed with its proposal to introduce marriage for same sex couples. The UK Government also decided that it would permit religious marriage ceremonies for same sex couples according to the rites of religious organisations that wished to opt in to this provision, whilst providing protection for religious organisations and their representatives who do not wish marry same sex couples.

7. The Marriage (Same Sex Couples) Act 2013 which gave effect to the Government's proposals in England and Wales received Royal Assent on 17 July 2013. Same sex couples have been able to marry in England and Wales since 29 March 2014. The Scottish Government has made similar provision for the marriage of same sex couples with the Marriage and Civil Partnership (Scotland) Act 2014; this Act came into force in December 2014.
8. In 2015 the parliaments of Jersey and Guernsey approved the principle of legislating to permit the marriage same sex couples.
9. Following consultation on the issue of same sex marriage in the Island in 2015, which resulted in 176 responses with a majority supportive of the proposal, the Isle of Man Government decided that legislation to allow same sex couples to get married should be introduced. The consultation included a copy of the draft proposed legislation which was derived from the UK's Marriage (Same Sex Couples) Act 2013. Except for drafting and typographical amendments the Bill is essentially the same as that which was issued for consultation.

## **Summary**

10. 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.
11. 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 England and Wales;
  - 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.
12. As in the UK, the Bill does not remove the availability of civil partnerships for same sex couples. Provision is made by the Bill for those in a civil partnership to convert that relationship to a marriage if they choose to do so.

13. 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 Bill 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 Bill 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.
14. The Bill also contains a number of other related provisions, including provisions on the recognition of certain marriages of same sex couples formed outside the Island. There are also consequential and interpretative provisions clarifying how the new law will affect a number of matters.
15. The Bill does not replicate the provisions of Part 5 (State Pensions) or Part 6 (Occupational Pensions and Survivor Benefits) of Schedule 4 to the Marriage (Same Sex Couples) Act 2013 (of Parliament) as the Treasury can make such provision as it considers necessary and appropriate as result of the Bill, taking into account arrangements between the Isle of Man and the UK in relation to pensions, by order under section 1 of the Pension Schemes Act 1995 or section 1 of the Social Security Act 2000.

## **Commentary on Clauses**

### **PART 1 – OPENING PROVISIONS**

16. **Clause 1** gives the short title of the resulting Act of Tynwald. **Clause 2** and **Clause 3** provide for the Act to be brought into operation by one or more orders made by the Council of Ministers. The power includes provision to amend other enactments as a consequence of this legislation, either in preparation for its commencement or following commencement.

### **PART 2 – AMENDMENT OF THE MARRIAGE ACT 1984**

17. **Clause 4** introduces the amendments to the 1984 Act contained in the following clauses.
18. **Clause 5** amends section 1 of the 1984 Act to remove the current condition that a marriage solemnised between two people is void (i.e. invalid) if the two people are of the same gender.
19. **Clause 6** amends section 3 of the 1984 Act which concerns marriages of persons who are under the age of 18 years. Normally parental consent (or similar) is required for a person who is aged 16 or 17 to get married but if a person has been married with consent, their spouse dies and the person wishes to enter into a further marriage whilst still under the age of 18 year parental consent for the later marriage is not

required. Similar provision exists in relation to civil partnerships under the Civil Partnership Act. The effect of the amendment made by this clause is that if a person who is a surviving civil partner wishes to get married whilst still under the age of 18 years parental consent will not be required in the same way as if they were a surviving spouse from a marriage.

20. **Clause 7** inserts new section 4A into the 1984 Act. This new section does three things: it complements the amendment made to section 1, confirming that the marriage of a same sex couple is lawful; it provides that such marriages can only be solemnised under a registrar's certificate or under a Deemster's licence (i.e. it cannot be solemnised in accordance with the rites of the Church of England); and it confirms that there is no requirement for any member of the clergy (i.e. a clerk in Holy Orders of the Church of England) to solemnise the marriage of a same sex couple.
21. **Clause 8** inserts new section 4B into the 1984 Act. This new section establishes that where a same sex couple has lawfully entered into a marriage in a country or territory outside of the Isle of Man, whether before or after the passing of the Bill, that marriage will be recognised under the law of the Island.
22. **Clause 9** inserts new section 4C into the 1984 Act. This new section protects individuals and religious organisations who do not wish to conduct or participate in a religious marriage ceremony on the grounds that it is a marriage of a same sex couple.
23. 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). Subsection (1) also states that they cannot be compelled to refrain from carrying out an "opt-out activity", which is also defined in subsection (3).
24. 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.
25. 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.
26. As referred to above, subsection (3) contains the definitions of "opt-in activity" and "opt-out activity". "Opt-in activity" means the various types of activity relating to the decision of a religious organisation to opt in to solemnizing marriages of same sex couples; this is by reference to new sections inserted into the 1984 Act by clauses 13, 14 and 18 of this Bill. For the avoidance of doubt, it should be noted that the Church of England could not opt-in to solemnizing the marriage of same sex couples without further primary legislation (either a Church Measure or an Act of Tynwald). "Opt-out activity" means any activity that reverses or otherwise modifies the effect of an opt-in activity".
27. Subsection (4) defines various other terms used in the section. It also makes clear that the conduct of a marriage registrar or the Chief Registrar is not by this section.
28. **Clause 10** makes a minor amendment to section 5 of the 1984 Act, which concerns methods of authorising marriages according to the rites of the Church of England. The

amendment is to recognise the fact that a marriage may now be celebrated at any time. This provision is unconnected to the introduction of marriage of same sex couples; it is included because the Bill is a convenient legislative vehicle to make the amendment.

29. **Clause 11** substitutes section 17 of the 1984 Act, which concerns the conditions under which marriages according to the rites of the Church of England are void. With the removal of the general provision in section 1 of the 1984 Act that a marriage is void if the couple are of the same gender, a specific condition is required in section 17 of the Act to provide that marriages of same sex couples according to the rites of the Church of England will be void. To improve the clarity of section 17 of the 1984 Act it is rewritten and substituted in its entirety.
30. **Clause 12** replaces the existing section 19 (Marriages which may be solemnized on authority of registrar's certificate) in Part III of the 1984 Act (Marriages under registrar's certificate) with a new section 19 (Marriage of a man and a woman; marriage of same sex couples for which no opt-in necessary). The new section 19 replicates the existing section 19 for marriages between a man and a woman and further authorises certain marriages of same sex couples (by civil ceremony). The section 19 therefore authorises:
  - religious marriage ceremonies between a man and a woman in registered buildings;
  - civil marriage ceremonies for all couples in a register office;
  - civil marriage ceremonies for all couples in approved premises (for example a hotel);
  - marriages between a man and a woman one of whom is house-bound or detained;
  - civil marriage ceremonies of a same sex couple, one of whom is house-bound or detained;
  - marriages between a man and a woman in a church or chapel of the Church of England.
31. Therefore, civil marriage ceremonies of same sex couples are authorised under this section, but religious marriages of same sex couples, where religious organisations other than the Church of England opt in to conducting marriages of same sex couples, are authorised under different provisions of the 1984 Act which are inserted by clauses 13 and 14 of this Bill.
32. **Clause 13** inserts new section 19A into the 1984 Act. This will permit religious organisations (other than the Church of England) to opt-in to the celebration of same sex marriages on their premises.
33. Subsection (1) of new section 19A permits religious marriage ceremonies of same sex couples in a place of worship that has been specifically registered to solemnize marriages of same sex couples under new section 29A ("an appropriately registered building"). (New section 29A which is inserted into the 1984 Act by clause 18 of the Bill sets out the procedure for the registration of a building for religious marriage ceremonies of same sex couples).
34. Subsection (2) sets out who can make an application for registration and to whom the application is made and subsection (3) of section 19A provides that an application for registration under section 29A cannot be made without the written consent of the relevant governing authority of the religious organisation concerned.

35. Subsection (4) of new section 19A defines what is meant by the "relevant governing authority". This definition leaves it open to religious organisations to define their governing authority as they wish for the purpose of giving consent to religious marriage of same sex couples.
36. Subsection (5) of new section 19A makes clear that the ability to opt in does not apply in respect of marriage according to the rites of the Church of England.
37. Subsection (6) makes section 19A subject to the provisions of sections 29D and 29E of the 1984 Act and to any regulations made under section 29C. Sections 29D and 29E are new sections inserted by clause 18 of the Bill and make provision about registration of buildings for marriage of same sex couples where buildings are shared by more than one religious organisation. New section 29C provides for the making of regulations by the Clerk of the Rolls to supplement the provisions in new sections 29A and 29B on the registration of a building and the cancellation of such a registration.
38. **Clause 14** inserts new section 19B into the 1984 Act. This new section permits opting-in for religious organisations (other than the Church of England) that wish to participate in same sex marriages of persons who are either housebound or who are detained.
39. Under the 1984 Act as it currently stands, when a opposite sex couple wish to get married and one of the couple is either housebound or detained the marriage can take place in the residence of the person who cannot be moved. Religious organisations can take part in such marriages even though where the marriage takes is not a place of worship.
40. As a result of the Bill the rights in relation to persons who are either housebound or detained and who wish to get married will also apply to same sex couples. Although there will be no obligation on any religious organisation to participate in the marriage of a same sex couple in the place of residence of a housebound or detained member of the couple, members of religious organisations (other than the Church of England) may participate if they wish to do so and the relevant governing authority of the organisation has consented to such participation.
41. NOTE: For the purposes of the 1984 Act, "detained" means that the person is either detained as a patient in a hospital (other than short term detentions under the Mental Health Act 1998) or detained in an institution (e.g. the Isle of Man prison) designated under the Custody Act 1995.
42. **Clause 15** amends section 21A of the 1984 Act. The amendment expands the registrar's powers to be able to require evidence in the case of a proposed same sex marriage under section 19B that the relevant governing authority of the organisation has consented to the participation of its members in the marriages of same sex couples.
43. **Clause 16** inserts new section 21B into the 1984 Act. This new section provides for the giving of additional evidence in connection with same sex marriages where a member of the couple is either housebound or detained. This evidence includes confirmation of where the marriage will take place; in the case of a person who is housebound, a medical statement confirming the person's condition; and the in case a person is detained, confirmation that the institution where the person is detained is content for marriage to take place. Similar provision exists in the 1984 Act for opposite sex couples where one of the couple is housebound or detained.
44. **Clause 17** amends section 29 of the 1984 Act to restrict that section's scope to the registration of buildings which are used for religious worship for the solemnization of

- marriages between a man and a woman. Separate provision is made relation to same sex couples in new sections inserted into the 1984 Act by clause 18.
45. NOTE: This is separate to the provision in section 19 of the 1984 Act for marriages to be solemnized on the authority of a certificate of a registrar in an approved place (e.g. a hotel), etc.
  46. **Clause 18** inserts new sections 29A to 29E into the 1984 Act.
  47. New section 29A deals with the procedures for registration of buildings which are used for religious worship as places where same sex couples can get married. This can be additional to, or separate from, registration as a place where a man and a woman can get married.
  48. As with registration under section 29 (for marriages between a man and a woman), a building cannot be registered for marriage of same sex couples unless it has been certified as a place of worship. The application is made, as with applications to register a building for marriage of opposite sex couples, by the proprietor or trustee of the building to the Chief Registrar.
  49. The application must be accompanied by a certificate demonstrating the consent of the relevant governing authority, a copy of that consent and (if the building is not already registered for marriage of opposite sex couples under section 29 of the Marriage Act) a certificate of use for religious worship. Part of a building may be registered.
  50. New section 29B deals with the cancellation of registration that has been granted under new section 29A and section 29C provides for the making of regulations by the Clerk of the Rolls to supplement sections 29A and 29B.
  51. New sections 29D and 29E deal with the registration and the cancellation of registration respectively of a building which is a shared building for the purposes of the Sharing of Church Buildings Act 1969 (of Parliament) as that Act has effect in the Island with exemptions, adaptations and modifications under the Sharing of Church Buildings Act 1986 (of Tynwald). The 1986 Act contains provisions which modify the 1984 Act in relation to the solemnization of marriage between a man and a woman in buildings which are shared between different churches. Rather than further complicate the existing provisions of the 1969 Act as they have effect Island to take account of the possibility of marriages of same sex couples in shared buildings, separate provision on this issue is inserted directly into the 1984 Act. Consequently, the Sharing of Church Buildings Act 1986 (of Tynwald) is amended to restrict its effect to the solemnization of marriage between a man and a woman in shared buildings (see clause 27 and paragraphs 1 to 3 of Schedule 3).
  52. **Clause 19** amends section 30 of the 1984 Act. That section as it currently stands deals with the cancellation by the Chief Registrar of the registration for marriages, under section 29, of a building which is used for religious worship because is no longer used for the purpose of public religious worship. Where a registration is cancelled under section 30 of the 1984 Act an application can be made under that section for alternative premises, which are used for religious worship, to be registered for the solemnisation of marriages.
  53. The amendments made by this clause extend the scope of section 30 of the 1984 Act to deal with the cancellation of a registration for marriages of same sex couples, under new section 29A, of a building which is used for religious worship when it is no longer used for such worship, and also allow for the possibility of alternative premises to be registered.

54. **Clause 20** amends section 31 of 1984 Act. That section deals with procedures for the solemnisation of marriage in a place of public religious worship which is registered under section 29 of the Act. The amendment inserts a reference to new section 29A under which a place of public religious worship may be registered for the purpose of the solemnisation of same sex marriages.
55. **Clause 21** inserts new section 34A into the 1984 Act. This new section makes parallel provision in respect of void same sex marriages to that made by the existing section 34 for marriages between a man and a woman. In each case the marriage will be void if the couple have knowingly and wilfully married in the absence of the required consent to the marriage. A marriage will also be void if it is purportedly solemnised between two persons of the same gender according to the rites of the Church of England.
56. **Clause 22** amends section 36 of the 1984 Act. That section concerns the marriage of person who is seriously ill and who is not expected to recover under the authority of a licence issued by a Deemster. The amendments made by this clause ensure that a Deemster can only authorise a religious marriage ceremony of a same sex couple under section 36 of the 1984 Act if the relevant governing authority has consented to marriages of same sex couples. The clause also amends section 36 so that death-bed marriages according to the rites of the Church of England cannot be authorised under a Deemster's licence so as to bring provision in the Island into line with that in England. This section will allow same sex couples to have "deathbed marriages" according to the rites of religious organisations which have opted in to the solemnization of marriages of same sex couples.
57. NOTE: For the avoidance of doubt, civil marriage ceremonies of same sex couples do not require the consent of any religious governing authority of course and so they can entered into under the authority of a Deemster's licence.
58. **Clause 23** amends section 39 of the 1984 Act. That section deals with the circumstances under which a marriage under a licence issued by a Deemster is not valid. The amendment adds the condition that the marriage of a same sex couple is not valid if it is solemnised in accordance with the rites of a religious organisation where relevant governing authority of that organisation has not given its consent to same sex marriages.
59. **Clause 24** makes a minor amendment to section 40 of the 1984 Act. That section deals with who is responsible for the registration of various categories of marriage. Subsection (1)(c) of that section provides that the registrar is responsible for registering marriages which fall within the categories set out in certain paragraphs out in section 19(1) (marriages which may be solemnized on the authority of a certificate of a registrar) of the 1984 Act . Section 19 of the 1984 Act is replaced by clause 12 of the Bill and as the list in subsection (1) of section 19 is expanded to include qualifying residential marriages (i.e. certain marriages in which one of the couple is housebound or detained) it is necessary to amend section 40 of the 1984 Act consequentially to ensure that the registrar is responsible for registering all appropriate categories of marriage.
60. **Clause 25** amends section 55 of the 1984 Act which deals with the interpretation of certain terms used in the Act. The definition of "registered building" is amended to take into account that a building can also be registered under new section 29A. In addition, a new provision is inserted to confirm that if, for the purpose of any provision of the 1984 Act as amended, a relevant governing authority of a religious organisation 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.

61. **Clause 26** 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 and other ecclesiastical law.
62. **Clause 27** introduces Schedule 3 to the Bill which contains consequential amendments to other Acts of Tynwald.
63. **Clause 28** contains repeals of provisions of certain Acts of Tynwald.
64. The entry "Parent of former spouse" in Part 2 of Schedule 1 to the 1984 Act is repealed. Part 2 of Schedule 1 to the 1984 Act lists the relationships between two people which result in a marriage that is solemnized between them being void, unless both are at least 21 years of age at the time of the marriage and the younger person has not at any time before the age of 18 been a child of the family in relation to the older person. This amendment is not related to the marriage of same sex couples. It was thought that the lists in Schedule 1 to the 1984 Act were the same as those in the UK's Marriage Act 1949 but during consideration of the 1984 Act in relation to the Bill it was noticed that there was a discrepancy (i.e. the relationship referred to above is not included in the UK Act). The Bill is a suitable vehicle to remove this discrepancy.
65. Section 12(1)(c) of the Matrimonial Proceedings Act 2003 (the 2003 Act) is repealed. Section 12 of the 2003 Act deals with grounds on which a marriage is void and subsection (1)(c) provides that a marriage is void if the parties are not respectively male and female.
66. Subsection (4) of section 21A of the 2003 Act is repealed because it is unnecessary because general interpretation provisions for Manx legislation allow what that subsection seeks to achieve. For information, section 21A of the 2003 Act allows the Council of Ministers, after consulting the Deemsters, to make regulations concerning the jurisdiction of the High Court in relation to proceedings for the dissolution or annulment of a marriage or for the legal separation of the parties to a marriage; and also in respect of the recognition in the Island of any judgment of a court of an EU member State which orders the dissolution or annulment of a marriage or the legal separation of the parties to a marriage. This repeal is unconnected to the extension of marriage to same sex couples but the Bill is a suitable vehicle to effect the repeal.
67. Certain entries in the table in Schedule 11 (overseas relationships which are treated as corresponding to civil partnership) to the Civil Partnership Act 2011 are repealed. Under the Civil Partnership Act 2011 (the 2011 Act) certain legal relationships lawfully entered into by same sex couples entered into outside the Island are to be treated as civil partnerships under the law of the Isle of Man. The table in Schedule 11 to the 2011 Act currently includes marriages of same sex couples lawfully entered into outside the Island but with the enactment of the Bill such relationships will be recognised as marriages in the Island and the relevant entries in the 2011 Act should be removed.
68. **Schedule 1** deals with the construction of existing and new Manx legislation generally in the light of the extended concept of marriage.

69. *Paragraph 1* provides that in existing Manx legislation references (however expressed) to a marriage, a married couple and a person who is married are to be construed as including the marriage of a same sex couple, a same sex couple who are married and a person who is in a same sex marriage respectively.
70. *Paragraph 2* provides that references (however expressed) in existing Manx legislation to couples and persons who are not married but living together as if they were are to be construed as including same sex couples who are not married but living together as if they were.
71. *Paragraph 3* deals with where existing Manx legislation deals differently with a man and a woman living together as if married, and two men or two women living together as if civil partners. In that case if the two men or two women are living together as if married, that existing legislation applies to them in the way that it would apply to them if they were living together as civil partners.
72. *Paragraph 4* provides that the provisions in the preceding paragraphs of Schedule 1 do not limit the general rule expressed in clause 26(1) and (2) of the Bill, i.e. that 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 and Manx legislation (whenever passed or made) has effect accordingly.
73. *Paragraph 5* provides for the interpretation of certain terms in new Manx legislation (i.e. legislation passed or made after the Bill is enacted and brought into operation). In particular, it provides that:
- "husband" includes a man who is married to another man;
  - "wife" includes a woman who is married to another woman;
  - "widower" includes a man whose marriage to another man ended with the other man's death;
  - "widow" includes a woman whose marriage to another woman ended with the other woman's death.
74. **Schedule 2** makes further provision about the legal effect of the extension of marriage to same sex couples.
75. *Paragraph 1* provides that the introduction of marriage of same sex couples will not affect the meaning of any marriage-related reference in documents, such as wills, deeds and documents governing charities, drawn up prior to clause 26 (effect of extension of marriage) coming into operation. Such references will be understood only in terms of marriage of opposite sex couples.
76. However, in future, after this Bill comes into operation, a reference to marriage in any new document may be understood as including marriage of same sex couples (depending on the precise terminology of the document).
77. *Paragraph 2* makes clear that the common law presumption, that a child born to a woman during her marriage is also the child of her husband (often referred to as "the presumption of legitimacy"), is not extended to marriages of same sex couples by clause 26. Therefore, where two women are married to each other and one of the parties to that marriage gives birth to a child, the other party will not be presumed to be the parent of that child by virtue of the common law presumption.
78. *Paragraphs 3 to 8* amend the Matrimonial Proceedings Act 2003 (the 2003 Act) in a manner analogous to amendments made to UK legislation concerning divorce and annulment of marriage.
79. *Paragraph 3* just introduces the amendments to the 2003 Act in the following paragraphs.

80. *Paragraph 4* amends section 2 of the 2003 Act, which deals with applications to the Court for a divorce order on the grounds that a marriage has broken down irretrievably. One of the conditions that will satisfy the Court that the marriage has broken down irretrievably is if that the respondent has committed adultery and the applicant finds it intolerable to live with the respondent. The effect of the amendment is to maintain the existing definition of adultery and provides that only conduct between one party to the marriage and a person of the opposite sex may constitute adultery. This applies to both opposite sex and same sex couples. Although an applicant could not use adultery as the reason for divorce if the conduct of the respondent was with a person of the same sex, a petition for divorce based upon the respondent's unreasonable behaviour could be used as an alternative.
81. *Paragraph 5* amends section 13 of the 2003 Act, which lists the grounds on which a marriage is voidable (i.e. the grounds on which it can be annulled). Under this section a marriage is voidable if it has not been consummated either because of incapacity or wilful refusal. The effect of the amendment is to maintain the existing understanding of the meaning of "consummation" and provides that non-consummation and wilful refusal to consummate can only be used as the ground for voiding a marriage in the case of a marriage between a man and a woman.
82. *Paragraph 6* amends section 21 of the 2003 Act, which contains further provision about the jurisdiction of the Court in relevant matters. The amendments provide that certain parts of the section only apply to marriages between a man and a woman; insert a reference to new Schedule A1 (jurisdiction in relation to the marriage of same sex couples) to the 2003 Act (see paragraph 7); and amend subsection (6) to confirm that the provisions in Schedule 1 to the 2003 Act concerning the staying of proceedings apply whether the proceedings are in respect of the marriage of a man and a woman or the marriage of a same sex couple.
83. *Paragraph 7* inserts new Schedule A1 into the 2003 Act. This new Schedule sets out which provisions in respect of jurisdiction in matrimonial causes in relation to marriages of same sex couples.
  - a) Paragraph 1 of Schedule A1 sets out the jurisdiction of the court in proceedings for orders relating to the ending of a marriage (divorce, judicial separation, nullity of marriage or because one of the couple is dead) and orders relating to declarations of validity.
  - b) Paragraph 2 of Schedule A1 provides that the court is able to deal with divorce, judicial separation and nullity cases either (a) where the court has jurisdiction because of regulations made under paragraph 5 of Schedule A1 (see below), or (b) when no court has that jurisdiction and either of the married same sex couple is domiciled in the Island when the case starts, or (c) when the same sex couple married under the law of the Island, no court has the paragraph 5 jurisdiction and it appears to the court in the interests of justice for it to deal with the case. In nullity cases the court additionally has jurisdiction if either of the couple died before the case started and was domiciled in the Island on the date of death or had been habitually resident in the Island throughout the year ending with the date of death. The court also has jurisdiction to deal with divorce, judicial separation or nullity for the same marriage when proceedings are pending under sub-paragraphs (1) or (2).
  - c) Paragraph 3 of Schedule A1 provides that the court has jurisdiction to deal with an application by one of a couple for an order which ends their marriage on the ground that their spouse is dead, provided that the applicant was domiciled in the Island on the date on which the proceedings are begun, the two people concerned

married under the law of the Island and it appears to the court to be in the interests of justice to deal with the case.

- d) Paragraph 4 of Schedule A1 says the court has jurisdiction to deal with an application for a declaration of validity if either party to the marriage concerned is domiciled in the Island on the date the case starts, was habitually resident in the Island throughout the year before the date the case starts, or the two people concerned married under the law the Island and it appears to the court to be in the interests of justice to deal with the case.
  - e) Paragraph 5 of Schedule A1 enables the Council of Ministers to make regulations about the jurisdiction of the courts to deal with divorce, judicial separation and nullity cases and about the recognition of such orders for a married same sex couple. These regulations would apply where one of the couple: is or has been habitually resident in a Member State of the European Union (EU), or is an EU national, or is domiciled in the Island. The regulations may correspond with the terms of Council Regulation (EC) No 2201/2003 (known as Brussels IIa) on jurisdiction, recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility. Brussels IIa deals with marriage of opposite sex couples. The provisions on recognition of judgments can apply retrospectively. Regulations under this paragraph require the approval of Tynwald.
  - f) Paragraph 6 of Schedule A1 sets out the meaning of "declaration of validity" in that Schedule as: a declaration as to the validity of a marriage, a declaration as to whether a marriage existed on a particular date, or a declaration as to the validity of matrimonial orders obtained outside the Island.
84. *Paragraph 8* amends Schedule 1 (concerning the staying of matrimonial proceedings) to the 2003 to confirm that the definition of "matrimonial proceedings" includes also applies to marriages of same sex couples.
85. *Paragraph 9* provides for contrary provision in certain limited cases to the general effect of relevant provisions which have a wide general effect. The relevant provisions are:
- clause 26(1) and (2), which provide for marriage to have the same effect in law in relation to same sex couples that it has in relation to opposite sex couples and for the law of the law of the Island to have effect accordingly and Schedule 1, which supports clause 26(1) and (2) by making specific provision about the interpretation of legislation; and
  - new section 27A of the Civil Partnership Act 2011, which provides for the conversion of an existing civil partnership into a marriage and that where a marriage is converted into a civil partnership the marriage has effect as if it had subsisted since the date when the civil partnership was formed.
86. In some cases, the wide general effect of the equivalence provisions goes too far, and so would produce results which are not in line with the policy. It is therefore necessary to ensure that the wide general effect of the equivalence provisions does not apply in particular circumstances, or applies in a different way from normal.
87. Some of these cases are already dealt with in the preceding provisions of Schedule 2. Other cases like this may be dealt with by an order made by the Council of Ministers under paragraph 9(4). Any such order is subject to the approval of Tynwald.
88. Sub-paragraphs 9(2) and (3) ensure that, where cases like this are dealt with by contrary provision, that provision overrides the wide general effect of the equivalence provisions.

89. For example, an Act of Tynwald might provide that a benefit is to be given to a widow who meets the prescribed requirements. The effect of section 11(1) and (2), combined with Schedule 1, means that the benefit would also be available to a person in a marriage of a same sex couple (of either sex) whose spouse had died. However, a man who was married to a woman and whose wife had died would not be entitled to the benefit. In this instance the equivalence provisions go too far and the Act conferring the benefit could be excluded from their effect by the making of contrary provision.
90. **Schedule 3** contains consequential amendments to other Acts of Tynwald.
91. Paragraphs 1 to 3 concern amendments to the Sharing of Church Buildings Act 1986 (the 1986 Act) (see also clause 18 of the Bill).
92. *Paragraph 1* just introduces the amendments in paragraphs 1 and 2.
93. *Paragraph 2* amends Schedule 1 to the 1986 Act, which specifies exemptions, adaptations and modifications and adaptations subject to which the Sharing of Church Buildings Act 1969 (of Parliament) applies in the Island. The result in further modification of the 1969 Act as it applies in the Island to take account of the possibility of shared building being registered for same sex marriages. References to the Marriage Act 1949 (of Parliament) are also updated to refer to the Marriage Act 1984 (of Tynwald).
94. *Paragraph 3* amends Schedule 2 to the 1986 Act, which sets out the text of the 1969 Act as it has effect in the Island with the exemptions, adaptations and modifications and adaptations set out Schedule 1 to the 1986 Act. The amendments in this paragraph reflect the amendments made by paragraph 2.
95. *Paragraph 4* amends the Civil Partnership Act 2011 (the 2011 Act).
- a) Sub-paragraph (1) introduces the amendments made by sub-paragraphs (2) to (4).
  - b) Sub-paragraph (2) inserts new section 27A into the 2011 Act. This new section provides for a same sex couple to be able to convert a civil partnership entered into in the Isle of Man into a marriage. The procedure to be followed and other matters are to be set out in regulations to be made by the Clerk of the Rolls. If a civil partnership is converted into a marriage under new section 27A of the 2011 Act the civil partnership ends on the conversion and the resulting marriage is to be treated as having existed since the date on which the civil partnership was formed.
  - c) Sub-paragraph (3) amends section 33 of the 2011 Act to make provision about the fees payable on the conversion of a civil partnership to a same-sex marriage.
  - d) Sub-paragraph (4) amends section 81 of the 2011 Act. That section provides that certain relationships ("specified relationships") of same sex couples which are listed in Schedule 11 to the 2011 Act that have been lawfully entered into outside the Island are to be treated as being equivalent to a civil partnership in the Island. The amendment provides that marriages of same sex couples lawfully entered into outside the Island are not to be specified relationships (because these marriages will be recognised as such in the Island).