Draft Order laid before Parliament under paragraph 13(1) of Schedule 6 to the Marriage (Same Sex Couples) Act 2013, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

MARRIAGE

The Consular Marriages and Marriages under Foreign Law (No. 2) Order 2014

Made - - - - ***

Coming into force in accordance with article 1

At the Court at ***, the *** day of ***

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 13(1) of, and paragraphs 1, 2, 7, 13 and 14 of Schedule 6 to, the Marriage (Same Sex Couples) Act 2013(**1**), is pleased, by and with the advice of Her Privy Council, to make the following Order.

In accordance with paragraph 13(1) of Schedule 6 to that Act a draft of this Order has been laid before, and approved by a resolution of, each House of Parliament.

In accordance with paragraph 13(2) of Schedule 6 to that Act the Scottish Ministers have been consulted.

PART 1

Introductory

1.—(1) This Order may be cited as the Consular Marriages and Marriages under Foreign Law (No. 2) Order 2014 and comes into force on the day after the day on which it is made.

(2) In this Order—

"the Act" means the Marriage (Same Sex Couples) Act 2013;

"registration officer" has the same meaning as in paragraph 6 of Schedule 6 to the Act.

(**1**) 2013 c. 30.

(3) Part 2 does not extend to Northern Ireland.

PART 2

Consular marriages

Countries or territories in which consular marriages may take place

2.—(1) The marriage of two people may, in accordance with the following provisions of the Order, take place in the presence of a registration officer in a country or territory referred to in paragraph (2), where the registration officer is satisfied that the conditions specified in paragraph 1(2) of Schedule 6 to the Act are met.

(2) A consular marriage may take place in those countries or territories outside the United Kingdom which have notified the Secretary of State in writing that there is no objection to such marriages taking place in that country or territory and which have not subsequently revoked that notice.

Relevant part of the United Kingdom

3. For the purposes of paragraph 1(2)(b) of Schedule 6 to the Act and this Order, the relevant part of the United Kingdom is the part jointly elected by the parties under article 4(4)(a).

Notice of intended marriage

4.—(1) Before any marriage can be solemnized under this Order, one of the parties to the proposed marriage must give notice to a registration officer of the parties' intention to marry.

(2) The notice of intention to marry must be given to the registration officer within whose consular district both of the parties have had their residence for the period of seven days ending on the day on which the notice is given.

(3) The notice of intention to marry must contain the following details of each of the parties to the proposed marriage—

(a) forenames;

(b) surname;

(c) nationality;

(d) date of birth;

(e) sex;

(f) address;

(g) condition;

(4) The notice of intention to marry must also contain the following details—

(a) the part of the United Kingdom, which must be either England and Wales or Scotland, which the parties have jointly elected as the relevant part of the United Kingdom for the purposes of the marriage; and

(b) the date on which the notice was given.

(5) The registration officer must retain every notice of intended marriage and must display a true copy of the notice, and the contact details of the person to whom any notice of objection to the proposed marriage should be sent, in a conspicuous place in the consular district of the registration officer for the period of 14 days ending on the day on which the solemnization of the marriage to which the notice relates may take place.

Consent to marriage

5.—(1) Where either party to the proposed marriage is under the age of 18 and the relevant part of the United Kingdom is England and Wales then the same consent is required as would be required in respect of a marriage solemnized in England and Wales on the authority of a certificate issued by a superintendent registrar under Part 3 of the Marriage Act 1949(**2**).

(2) The Secretary of State may dispense with the requirement to obtain consent if satisfied that it cannot be obtained because of the absence, inaccessibility or disability of the person whose consent is so required.

(3) On a request in person of any person whose consent is required, the registration officer must produce the notice given under article 4(1).

(4) Such person may forbid the solemnization of the marriage referred to in the notice at any time before the marriage has been solemnized by writing the word "forbidden" on the notice, together with the person's name and address and capacity to forbid the marriage.

(5) If a person forbids the proposed marriage to which the notice relates in accordance with paragraph (4), the notice is void and the proposed marriage cannot be solemnized under that notice.

Objection to marriage

6.—(1) Any person may enter an objection to a proposed marriage, including by electronic means, by giving notice of the objection in writing to the registration officer to whom the notice of the proposed marriage was given under article 4.

(2) An objection must be signed by the person making it, or on that person's behalf, and must include the person's name, address and ground of objection.

(3) An objection entered by electronic means need not contain the signature of the person making it but must contain a statement from that person that it originates from them.

(4) If an objection is entered in accordance with paragraphs (1) to (3) in respect of a proposed marriage, the registration officer must give notice in writing of the objection to the person who gave notice of the proposed marriage under article 4, and the marriage may not be solemnized until either the objection has been withdrawn by the person who made it, or the registration officer is satisfied that the objection should not obstruct the solemnization of the marriage.

(5) The registration officer must notify in writing the person who gave notice of the proposed marriage if any objection entered in respect of the proposed marriage under paragraph (1) is withdrawn.

(6) The registration officer must notify in writing the person who has entered the objection and the person who gave notice of the proposed marriage of any decision that the objection should not obstruct the solemnization of the marriage.

Expiry of notice

7.—(1) A marriage cannot be solemnized on a day unless a notice under article 4(1) relating to that marriage has been given within the period of three months before that day.

(2) If an objection has been made under article 6, paragraph (1) is to have effect as if it prohibited a marriage from being solemnized on a day which is after the end of the period of three months beginning with—

(a) where the objection is withdrawn, the day on which the registration officer gives notice of the withdrawal of the objection under article 6(5);

(**2**) 1949 c. 76.

(b) where the registration officer decides that the objection should not obstruct the solemnization of the marriage, the day on which the registration officer gives notice of that decision under article 6(6).

Oath before marriage

8. Before a marriage is solemnized under this Order, each of the parties entering into the marriage must appear before a registration officer and sign, in a book kept by a registration officer for the purpose, a declaration—

(a) that he or she believes —

(i) where the relevant part of the United Kingdom is England and Wales, that there is no impediment to the marriage such that the marriage would be void under section 1 of the Marriage Act 1949(**3**) or other lawful hindrance;

(ii) where the relevant part of the United Kingdom is Scotland, that there is no impediment to the marriage such that the marriage would be void under section 2 of the Marriage (Scotland) Act 1977(**4**) (marriage of related persons) or other lawful hindrance;

(b) that both of the parties have for a period of 21 days ending on the day on which the declaration is made had their usual residence within the consular district of the registration officer; and

(c) where either party is under the age of 18 and the relevant part of the United Kingdom is England and Wales—

(i) that any consent to the marriage which is required in respect of that party has been obtained;

(ii) that the necessity of obtaining any such consent in respect of that party has been dispensed with; or

(iii) that the party is either a widow or a widower or surviving civil partner or that there is no person having authority to give any such consent.

Solemnization of marriage

9.—(1) After the 14 day period in article 4(5) has elapsed, if no impediment to the marriage has been shown to the registration officer to whom the notice of the proposed marriage was given under article 4 and the conditions in paragraph 1(2) of the Act are fulfilled, the marriage may be solemnized.

(2) Every marriage must be solemnized in consular premises, with open doors, in the presence of two or more witnesses, none of whom may be the registration officer in whose presence the marriage is solemnized.

(3) Where it would otherwise not be stated or indicated in the course of the ceremony that neither of the parties knows of any lawful impediment to their marriage, then, in some part of the ceremony and in the presence of the registration officer and witnesses, each of the parties is to declare "I solemnly declare that I know not of any lawful impediment why I A.B. (*or C.D.*) may not be joined in matrimony to C.D. (*or A.B.*)."

(**3**) 1949 c. 76. Section 1 has been amended by section 1(6) of, and paragraph 2 of Schedule 1 to, the Marriage (Prohibited Degrees of Relationship) Act 1986 (c. 16), section 11 of and paragraphs 1 and 2 of Schedule 4 to, the Gender Recognition Act 2004 (c. 7), section 261(1) of, and paragraph 13 of Schedule 27 to, the Civil Partnership Act 2004 (c. 33) and S.I. 2007/438.

(**4**) 1977 c.15. Section 2 has been amended by section 10 of, and paragraph 17 of Schedule 1 and Schedule 2 to, the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9) and section 2 of, and paragraph 2 of Schedule 2, to the Marriage (Prohibited Degrees of Relationship) Act 1986 (c. 16).

(4) As an alternative to the declaration set out in paragraph (3) the persons contracting the marriage may make the requisite declaration either—

(a) by saying "I declare that I know of no legal reason why I (*name*) may not be joined in marriage to (*name*)"; or

(b) by replying "I am" to the question put to them successively "Are you (*name*) free lawfully to marry (*name*)?".

(5) Where it would otherwise not be stated by each of the parties in the course of the ceremony that they take the other person as husband or wife then, in some part of the ceremony and in the presence of the registration officer and witnesses, each of the parties is to say to the other "I call upon these persons here present to witness that I A.B. (*or C.D.*) take thee C.D. (*or A.B.*) to be my lawful wedded wife (*or* husband)."

(6) As an alternative to the words of the contract set out in paragraph (5) the persons to be married may say to each other "I (*name*) take you (*or* thee) (*name*) to be my wedded wife (*or* husband)."

(7) A certificate of the Secretary of State as to any place being, or being part of, consular premises is conclusive.

Register of marriages

10.—(1) A registration officer for the consular district, nominated by the Secretary of State for these purposes, must maintain a register and therein register the details provided in accordance with article 4(3) of every marriage solemnized in the consular district in accordance with this Order.

(2) The entry in the register of every marriage must be signed by the registration officer solemnizing the marriage, by both the parties married and by two witnesses to the marriage.

(3) Every nominated registration officer must, at such times as are determined by the Secretary of State, send to the Registrar General for England and Wales a copy of all the entries of marriages in the register kept by the registration officer entered since such details were last sent, and if there has been no such entry, confirmation of that fact.

(4) Where the Registrar General for England and Wales receives a copy of an entry of marriage in the register under paragraph (3) in relation to which the parties elected Scotland as the relevant part of the United Kingdom for the purposes of the marriage, the Registrar General for England and Wales must send a certified copy of the entry to the Registrar General for Scotland.

(5) Any person shall be entitled, upon payment of a fee, to obtain from the Registrar General for England and Wales or the Registrar General for Scotland, as the case may be, a certified copy of an entry of marriage in the register received under paragraph (3) or (4).

(6) The fee payable under paragraph (5) shall be the same fee as is for the time being charged by that Registrar General for the provision of a certified copy of, and any necessary search for, an entry in the records in his custody of marriages performed in England and Wales or Scotland, as the case may be.

Conclusive proof of marriages

11. After a marriage has been solemnized in accordance with this Order it shall not be necessary to prove—

(a) that the parties fulfilled any requirement of residence imposed;

(b) that any necessary consent was obtained;

(c) that the registration officer had authority to solemnize the marriage;

(d) that the solemnization took place within consular premises;