

# MARRIAGE (SAME SEX COUPLES) (OVERSEAS TERRITORIES) BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Marriage (Same Sex Couples) (Overseas Territories) Bill [HL] as introduced in the House of Lords on 6 July 2022 (HL Bill 40).

- These Explanatory Notes have been prepared by Lord Cashman in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The purpose of the Bill is to make same sex marriage lawful in the six Overseas Territories where it is currently unlawful: Anguilla; Bermuda; British Virgin Islands; Cayman Islands; Montserrat; and Turks and Caicos Islands.
- 2 The Bill empowers the Governor of each Territory to make changes to the law in the Territory to recognize the lawfulness of same sex marriage and allow for the solemnization of marriage of same sex couples.
- 3 The Bill also protects individuals and religious organisations that do not wish to conduct or participate in a religious marriage on the ground that it is a marriage of a same sex couple.

## Policy background

- 4 Same sex marriage is lawful in seven Overseas Territories: the British Antarctic Territory; the British Indian Ocean Territory; the Falkland Islands; Gibraltar; the Pitcairn Islands; Saint Helena, Ascension and Tristan da Cunha; and South Georgia and the South Sandwich Islands.
- 5 In the Sovereign Base Areas of Akrotiri and Dhekelia, provision is made for marriage (including the marriage of same sex couples) by the Overseas Marriage (Armed Forces) Order 2014. This Order makes provision for two people to marry in countries or territories outside the UK where, inter alia, one of the proposed parties to the marriage is a member of Her Majesty's armed forces serving in the country or territory.
- 6 Same sex marriage is not lawful in six Overseas Territories: Anguilla; Bermuda; British Virgin Islands; Cayman Islands; Montserrat; and Turks and Caicos Islands.

## Legal background

- 7 There is no limit to the power of Parliament to enact primary legislation for any of the Overseas Territories.
- 8 As the UK Government has recognized, it "has responsibilities towards the people of the Territories" and, whilst it "acknowledges the sensitivity of this area of work", it "believes that those living in the Territories have a right to expect the same high standards of governance as in the UK, including in the areas of human rights...".<sup>1</sup>
- 9 This requires the UK to "promote the political, economic, social and educational advancement of the people of the Territories, to ensure their just treatment and their protection against abuses...".<sup>2</sup>
- 10 By legislating to make same sex marriage lawful in the six Overseas Territories, Parliament will ensure that same sex couples receive equal treatment and are protected against discrimination on the grounds of sexual orientation.

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<sup>1</sup> *The Overseas Territories: security, success and sustainability*, Cm 8374, 2012, p. 9:  
<https://www.gov.uk/government/publications/the-overseas-territories-security-success-and-sustainability>

<sup>2</sup> *Ibid*, p. 13.

## Territorial extent and application

11 The Bill extends to the following territories—

Anguilla

Bermuda

British Virgin Islands

Cayman Islands

Montserrat

Turks and Caicos Islands.

# Commentary on provisions of Bill

## Clause 1: Extension of marriage to same sex couples

- 12 Clause 1 makes marriage of same sex couples lawful in the Territories to which the Bill extends (Anguilla; Bermuda; British Virgin Islands; Cayman Islands; Montserrat; Turks and Caicos Islands).

## Clause 2: Effect of extension of marriage

- 13 Clause 2 provides that, as a consequence of the extension of marriage to same sex couples, marriage has the same effect in the law of the Territory in relation to such a couple as it does in relation to an opposite sex couple.

## Clause 3: Power of Governor to make provision in respect of marriage of same sex couples

- 14 Clause 3 provides the Governors in the six Territories to which the Bill extends with the power to modify or adapt any existing law in the Territory to ensure that it both recognizes the marriage of same sex couples and enables the solemnization of such marriages.

## Clause 4: Solemnization of civil marriage

- 15 Clause 4 specifies that the Governor must make provision for the solemnization of civil marriage of same sex couples that is equivalent to the provision made for the solemnization of civil marriage of opposite sex couples. In this respect, for all purposes connected to the solemnization of a civil marriage, same sex and opposite sex couples must be treated equally.

## Clause 5: Solemnization of marriage according to religious rites: no compulsion to solemnize

- 16 Clause 5 deals with the solemnization of religious marriage of same sex couples:
- 17 Subsection (1) specifies that the Governor may make provision for the solemnization of religious marriage of same sex couples that is equivalent to the provision made for the solemnization of religious marriage of opposite sex couples. The power of the Governor to make such provision is discretionary.
- 18 Should the Governor decide to make such provision then subsection (2) provides that the Governor must also include protections to prevent any individual or religious organisation from being compelled to be involved in any aspect of a religious marriage (or religious ceremony following a civil marriage) when the individual or religious organisation does not wish to take part because it is the marriage of a same sex couple.

## Clause 6: Provision for civil marriage to be made within 6 months

- 19 Clause 6 specifies that the Governor must make provision in respect of marriage of same sex couples, including the solemnization of civil marriage (but not religious marriage) of same sex couples, within 6 months from the commencement of this Act.

## Clause 7: Exercise of powers of Governor

- 20 Clause 7 allows the Governor to delegate his or her powers granted by the Bill.

## Clause 8 and Clause 9: Interpretation, extent, commencement and short title

- 21 Clause 8 and Clause 9 deal with interpretation, extent, commencement and short title.

## Commencement

- 22 Clause 9 makes provision about the coming into force of the provisions of the Bill on the day on which the Act is passed.

## Related documents

- 23 The following documents are relevant to the Marriage (Same Sex Couples) (Overseas Territories) Bill [HL] and can be read at the stated locations:
- House of Commons Library, *Same-sex marriage in the UK's Overseas Territories* (4 April 2022):  
<https://commonslibrary.parliament.uk/same-sex-marriage-in-the-uks-overseas-territories/>
  - Foreign and Commonwealth Office, *The Overseas Territories: security, success and sustainability* (Cm 8374, 2012):  
<https://www.gov.uk/government/publications/the-overseas-territories-security-success-and-sustainability>

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Ordered by the House of Lords to be printed, 6 July 2022

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