

A BILL

entitled

DOMESTIC PARTNERSHIP AMENDMENT ACT 2022

WHEREAS it is expedient to amend the transitional period of the Domestic Partnership Act 2018 in light of the Privy Council judgment in *Attorney General for Bermuda v Ferguson and others*, and make connected provision;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Domestic Partnership Amendment Act 2022.

Amends section 54

2 (1) Section 54 of the Domestic Partnership Act 2018 ("the principal Act") is amended as follows.

(2) In subsection (1), delete the definition of "transitional period" and substitute—

" "transitional period" means the period beginning on 5 May 2017 (the date of the Supreme Court judgment in *Godwin and DeRoche v The Registrar General and others*) and ending on 14 March 2022 (the date of the Privy Council judgment in *Attorney-General for Bermuda v Ferguson and others*), but does not include the period between 1 June 2018 and 23 November 2018; ".

(3) In subsection (5), delete "the commencement date" and substitute "the end of the transitional period".

Applications for marriage made after 14 March 2022

3 (1) A notice of marriage given after 14 March 2022 under section 10 of the Marriage Act 1944 or section 6 of the Maritime Marriage Act 1999 relating to a same sex couple shall be treated as a notice of an intended domestic partnership or maritime domestic partnership under section 7 of the Domestic Partnership Act 2018.

DOMESTIC PARTNERSHIP AMENDMENT ACT 2022

(2) An application made after 14 March 2022 for a special licence under section 20 of the Marriage Act 1944 or section 13 of the Maritime Marriage Act 1999 relating to a same sex couple shall be treated as an application for a special licence under section 10 of the Domestic Partnership Act 2018.

Commencement

4 This Act shall be deemed to have come into effect on 14 March 2022.

DOMESTIC PARTNERSHIP AMENDMENT BILL 2022

EXPLANATORY MEMORANDUM

This Bill seeks to amend the transitional period in section 54 of the Domestic Partnership Act 2018 (“the principal Act”) in light of the Privy Council judgment in *Attorney General for Bermuda v Ferguson and others* [2022] UKPC 5.

Background

Section 53 of the principal Act provides that a marriage is void unless the parties are respectively male and female.

Section 54 of the principal Act provided for a transitional period (a) during which certain same sex marriages entered into in Bermuda or on Bermuda registered ships would be valid, and (b) before or during which certain overseas same sex marriages could be recognised in Bermuda. The transitional period was defined as the period from 5 May 2017 (the date of the Supreme Court judgment in *Godwin and DeRoche v The Registrar General and others*) until immediately before the commencement date of the principal Act on 1 June 2018.

The constitutionality of section 53 of the principal Act was challenged in the case of *Ferguson and others v Attorney General for Bermuda*. On 6 June 2018, the Supreme Court (Kawaley CJ) determined that the section was unconstitutional, but his judgment was stayed pending appeal. On 23 November 2018, the Court of Appeal upheld the Supreme Court decision (though on different grounds), consequently from that date same sex marriages conducted in Bermuda and on Bermuda registered ships were not invalidated by section 53, and certain overseas same sex marriages could be recognised in Bermuda.

On 14 March 2022, the Privy Council overruled the decision of the Court of Appeal and determined that section 53 as enacted was not unconstitutional. This casts doubt on the validity of same sex marriages conducted in Bermuda or on Bermuda registered ships since 1 June 2018, and the recognition in Bermuda since that date of overseas same sex marriages. Accordingly this Bill seeks to clarify the position and extend the transitional period to 14 March 2022, but not including the period between 1 June 2018 and 23 November 2018.

Clause 1 is self explanatory.

Clause 2 amends section 54(1) of the principal Act to replace the definition of “transitional period” so that it extends from 5 May 2017 (the date of the Supreme Court judgment in *Godwin and DeRoche v The Registrar General and others*) until 14 March 2022 (the date of the Privy Council judgment in *Attorney General for Bermuda v Ferguson and others*), but not including the period between 1 June 2018 and 23 November 2018. Subsection (3) makes a consequential amendment to section 54(5).

Clause 3 subsection (1) provides that a notice of marriage given under section 10 of the Marriage Act 1944 or section 6 of the Maritime Marriage Act 1999 relating to a same sex couple after 14 March 2022 shall be treated as a notice of an intended domestic partnership or maritime domestic partnership under section 7 of the principal Act. Subsection (2)

DOMESTIC PARTNERSHIP AMENDMENT BILL 2022

provides that an application for a special licence relating to a same sex couple made after 14 March 2022 shall be treated as an application for a special licence under section 10 of the principal Act.

Clause 4 deems the Bill to have come into effect on 14 March 2022, the date of the Privy Council judgment in *Attorney General for Bermuda v Ferguson and others*.