

A BILL

entitled

DOMESTIC PARTNERSHIP ACT 2017

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WHEREAS it is expedient to provide for the formalisation and registration of a relationship between adult couples, to be known as a domestic partnership, to clarify the law relating to marriage, and to make connected and related 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:

Preliminary

Citation

- 1 This Act may be cited as the Domestic Partnership Act 2017.

Interpretation

- 2 In this Act—

“commencement date” means the date on which this Act comes into operation;

“Deputy Registrar” means a person appointed under section 28;

“domestic partner” means a party to a domestic partnership;

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“domestic partnership” means a domestic partnership formalised and registered in accordance with this Act;

“domestic partnership officer” means a person appointed under section 25 or licensed under section 31 or 32;

“General Register of Domestic Partnerships” means the register kept under section 21;

“licence” means a licence for domestic partnership (except in relation to a licence for maritime domestic partnership officers in sections 31 to 34);

“licence for domestic partnership” means a licence issued by the Registrar under section 9;

“Minister” means the Minister responsible for the Registrar-General;

“overseas relationship” has the meaning given in section 36;

“prescribed” means prescribed by regulations made under this Act;

“prohibited degrees of domestic partnership” has the meaning given in section 6 and Schedule 1;

“Registrar” means the Registrar of Domestic Partnerships who shall be—

- (a) the Registrar-General; or
- (b) such other public officer as may be appointed by the Minister to carry out the functions of the Registrar in relation to this Act;

“special licence” means a special licence issued by the Minister under section 10.

Overview of domestic partnership

- 3 (1) Two people may enter into a domestic partnership under this Act if—
- (a) they are both over the age of 18 years;
 - (b) neither is currently married, in a domestic partnership or overseas relationship; and
 - (c) they are not within the prohibited degrees of domestic partnership.
- (2) A domestic partnership may be formalised by the Registrar or, if the Registrar has issued a licence or the Minister has issued a special licence, by a domestic partnership officer (see sections 13, 14 and 34).
- (3) After a domestic partnership is formalised, it must be registered under section 21.
- (4) The dissolution of a domestic partnership is governed by the Matrimonial Causes Act 1974, as applied by section 41.
- (5) This section is a summary only and subject to the provisions of this Act.

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Capacity

Age of eligibility

4 A person who has not reached the age of 18 years is prohibited from entering into a domestic partnership.

Requirement not to be already married or in domestic partnership

5 (1) A person who is married is prohibited from entering into a domestic partnership.

(2) A person who is in a domestic partnership is prohibited from entering into another domestic partnership.

(3) A person who is in an overseas relationship is prohibited from entering into a domestic partnership.

Prohibited degrees of domestic partnership

6 (1) Two people who are within the prohibited degrees of domestic partnership, as set out in Schedule 1, are prohibited from entering into a domestic partnership with each other.

(2) Subsection (1) is subject to paragraph 4 of Schedule 1.

Notice and issue of licence

Notice of domestic partnership and statutory declaration

7 (1) If two people intend to enter into a domestic partnership, one of them shall appear personally before the Registrar and give notice in the prescribed form of the intended domestic partnership.

(2) The person giving notice must also make a statutory declaration in the prescribed form before the Registrar declaring that the person believes that—

- (a) the parties are both over the age of 18 years;
- (b) neither party is currently married, in a domestic partnership or overseas relationship;
- (c) the parties are not within the prohibited degrees of domestic partnership or, if they are, a court order has been made under paragraph 4 of Schedule 1 dispensing with the prohibition; and
- (d) there is no other lawful impediment to the intended domestic partnership; and
- (e) the particulars in the notice are true.

(3) If both of the parties to an intended domestic partnership are ordinarily resident outside Bermuda, the requirements of this section are satisfied if—

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- (a) one of the parties posts the notice in the prescribed form to the Registrar;
and
 - (b) one of the parties, at any time before the licence is issued or (if the Registrar is to formalise the domestic partnership) the domestic partnership is formalised, makes a statutory declaration as to the matters in subsection (2).
- (4) The person giving notice under this section must pay the prescribed notice fee.

Registration and publication of notice

8 (1) On receiving notice of the intended domestic partnership, the Registrar shall enter the particulars contained in the notice and the date of the receipt of the notice in a register (the “Domestic Partnership Notice Register”), and shall keep the notice posted in a conspicuous place in the office of the Registrar-General for a period of not less than fourteen days from the date of the receipt thereof.

(2) The Registrar shall also within three days of the receipt of the notice of intended domestic partnership cause a notice in the prescribed form to be published twice in any newspaper published and circulated in Bermuda.

(3) Any expenses incurred by the Registrar in the publication of such a notice of domestic partnership shall be paid to the Registrar by the person who gave the notice.

Issue of licence to enter into domestic partnership

9 (1) After the posting and publication of the notice of intended domestic partnership as required by section 8, and at any time not later than three months nor earlier than fourteen days after the receipt of the notice of domestic partnership, the Registrar on the application of either of the parties to the intended domestic partnership, shall—

- (a) if no lawful impediment has been shown to the Registrar’s satisfaction why a licence for domestic partnership should not be issued; and
- (b) if no caveat has been entered against the issue of a licence or if a caveat so entered has been removed (see sections 16 and 17),

issue to the applicant a licence for domestic partnership in the prescribed form.

(2) The Registrar shall not issue a licence for domestic partnership until the expenses of advertisement have been paid as required by section 8(3).

Special licence

10 (1) Notwithstanding anything in this Act, the Minister may in the case of any intended domestic partnership dispense with the giving of notice of domestic partnership and with the issue of a licence for domestic partnership by the Registrar, and may grant a special licence in the prescribed form authorising the formalising of the domestic partnership before the Registrar or a domestic partnership officer.

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(2) An application for a special licence may be made by a party to the intended domestic partnership to the Minister and it shall be submitted to the Registrar together with the affidavit referred to in subsection (5).

(3) The Registrar shall, if satisfied that there is sufficient information for the consideration of the Minister, forward the application and all other relevant documents to the Minister together with his recommendation thereon.

(4) The Minister shall not grant a special licence under this section unless—

- (a) it appears to him that the intended domestic partnership is not prohibited by this Act;
- (b) there are special or exceptional circumstances justifying the grant of a special licence; and
- (c) an affidavit is produced to him as mentioned in subsection (5).

(5) One of the parties to the intended domestic partnership shall make an affidavit deposing to the following matters—

- (a) that the parties are both over the age of 18 years;
- (b) that neither party is currently married, in a domestic partnership or overseas relationship;
- (c) that the parties are not within the prohibited degrees of domestic partnership or, if they are, that a court order has been made under paragraph 4 of Schedule 1 dispensing with the prohibition; and
- (d) that there is no other lawful impediment to the intended domestic partnership.

Licence and special licence lapse within three months

11 Where an intended domestic partnership does not take place within three months after the date of the issue of any licence or special licence relating to the intended domestic partnership, the licence or special licence shall be void, and the domestic partnership shall not be entered into under the authority of that licence or special licence.

Licence authorises but does not oblige

12 A licence or special licence authorises, but does not oblige, a domestic partnership officer to formalise the domestic partnership to which the licence relates.

Formalisation of domestic partnership

Formalisation by the Registrar

13 (1) The Registrar may formalise a domestic partnership if he is satisfied—

- (a) that the domestic partnership is not prohibited by this Act;
- (b) that the requirements of this Act have been complied with; and

- (c) that—
 - (i) no caveat to the domestic partnership has been lodged under section 16; or
 - (ii) if a caveat has been lodged, it has been withdrawn or removed.
- (2) The formalisation shall not take place—
 - (a) earlier than fourteen days after the date on which notice of intended domestic partnership was given; or
 - (b) more than three months after the date on which notice of the intended domestic partnership was given (or, where a caveat has been lodged, more than three months after the date on which the caveat was withdrawn or removed).
- (3) A domestic partnership shall only be formalised by the Registrar between the hours of—
 - (a) 10am and 4pm on a Monday to Friday (other than a public holiday); or
 - (b) 10am and 12 noon on a Saturday.
- (4) A domestic partnership may only be formalised by the Registrar—
 - (a) at the office of the Registrar-General; or
 - (b) at an alternative approved location.
- (5) During the formalisation, in the presence of the Registrar and at least two credible witnesses, each party shall make a clear statement that—
 - (a) gives the full names of both parties; and
 - (b) acknowledges that they are freely joining in a domestic partnership with each other and know of no lawful impediment to the domestic partnership.
- (6) The Minister may—
 - (a) make regulations prescribing buildings or other places as alternative approved locations for the purposes of subsection (4)(b); and
 - (b) on application made by the parties in writing at least 14 days before the proposed date of the formalisation, approve an additional alternative location, subject to the approval of the Registrar and on such terms and conditions as the Minister sees fit.
- (7) The parties to a domestic partnership to be formalised at an alternative approved location shall—
 - (a) obtain the written permission of the owner or occupier to use that location for the formalisation of their domestic partnership and notify the Registrar accordingly; and
 - (b) comply with any terms and conditions imposed by the owner or occupier.

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Formalisation by domestic partnership officer

14 (1) On the delivery to him of either—

- (a) a valid licence for domestic partnership issued by the Registrar under section 9; or
- (b) a valid special licence granted by the Minister under section 10,

a domestic partnership officer may formalise a domestic partnership between the parties specified in the licence or special licence.

(2) The domestic partnership shall be formalised in the presence of two or more credible witnesses in addition to the domestic partnership officer.

(3) A domestic partnership may be formalised in any place in Bermuda, but shall not be formalised in a place to which access is prevented by locked or barred doors or otherwise (see also section 34 in relation to domestic partnerships formalised on Bermuda ships on the high seas).

(4) During the formalisation, in the presence of the domestic partnership officer and at least two credible witnesses, each party shall make a clear statement that—

- (a) gives the full names of both parties; and
- (b) acknowledges that they are freely joining in a domestic partnership with each other and know of no lawful impediment to the domestic partnership.

(5) A domestic partnership officer shall not formalise a domestic partnership if he knows or has reason to believe that there is any lawful impediment to the domestic partnership.

Domestic partnership in extremis

15 (1) Notwithstanding anything in this Act, if the conditions specified in subsection (2) are fulfilled, it shall be lawful to formalise a domestic partnership before a domestic partnership officer without giving notice of the intended domestic partnership, or (if notice has been given) without the issue of any licence for domestic partnership, or without the grant of a special licence, or after the expiration of three months from the date of the issue of a licence or special licence.

(2) The conditions referred to in subsection (1) are as follows—

- (a) both parties to the intended domestic partnership must be legally competent to enter into the domestic partnership;
- (b) the domestic partnership must be formalised in the presence of two or more credible witnesses in addition to the domestic partnership officer, and one of the witnesses must be a medical practitioner;
- (c) each party shall give a clear statement that—
 - (i) gives the full name of each party; and

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- (ii) acknowledges that they are freely joining in a domestic partnership with each other and know of no lawful impediment to the domestic partnership;
 - (d) one at least of the parties to the intended domestic partnership must in the opinion of the medical practitioner be in a dying state but able to understand the effect of entering into the domestic partnership.
- (3) A domestic partnership formalised under this section shall not operate as a revocation of any will.

Caveat

Caveat to intended domestic partnership

16 (1) A person who knows or claims to know of any lawful grounds why a domestic partnership should not take place may enter a caveat against the issue of a licence by the Registrar.

(2) A person shall enter a caveat by notice in writing signed by him, stating his full name, residential address, and the grounds of objection on which he claims the domestic partnership should not take place.

(3) A caveat shall be given to the Registrar, and may be given at any time before the issue of the licence to which it relates.

(4) On receipt of a caveat, the Registrar shall forthwith—

- (a) record in the Domestic Partnership Notice Register the particulars contained in the notice and the date of receipt; and
- (b) refer the caveat to a Judge of the Supreme Court.

Powers of Judge regarding caveat

17 Where a caveat has been referred to a Judge, the following provisions shall have effect—

- (a) if the Judge is of opinion that no legal ground has been disclosed in the caveat for preventing the domestic partnership, he may order the caveat to be removed without requiring any of the parties to appear;
- (b) in other cases, the Judge shall cause a summons to be issued to the parties to the intended domestic partnership and the person by whom the caveat has been entered requiring such person to show cause why the licence for domestic partnership should not be issued;
- (c) the Judge may hear and determine every such matter in a summary way and shall either confirm the caveat or order it to be removed;
- (d) if the caveat is removed, the Registrar may issue the licence for domestic partnership and the domestic partnership may proceed as if the caveat had not been entered, but the time that has elapsed between the entry and

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removal of the caveat shall not be computed in the period of three months specified in section 11;

- (e) if it appears to the Judge that the caveat has been entered on insufficient grounds, the Judge may order the person who entered the caveat to pay compensation and costs to the parties to the intended domestic partnership;
- (f) if the caveat is confirmed, the Registrar shall forthwith inform every domestic partnership officer.

Void and voidable domestic partnerships

Grounds on which a domestic partnership is void

18 A domestic partnership shall be void on the following grounds only, that is to say—

- (a) if it is not formalised by the Registrar, a Deputy Registrar or a domestic partnership officer;
- (b) if at the time it was entered into either party was under the age of 18 years;
- (c) if at the time it was entered into either party was already lawfully married, in a domestic partnership or overseas relationship;
- (d) if at the time it was entered into the parties were within the prohibited degrees of domestic partnership, and no order under paragraph 4 of Schedule 1 had been obtained;
- (e) if both parties knowingly and wilfully acquiesce in the formalisation of the domestic partnership under a false name or names;
- (f) if both parties to the domestic partnership (not being a domestic partnership in extremis) knowingly and wilfully acquiesce in its formalisation without any notice given of the domestic partnership (where such notice is required by this Act) or without the authority, as the case may be of a licence or special licence; or
- (g) if it is formalised as a domestic partnership in extremis, and both parties knowingly and wilfully acquiesce in its being so formalised without fulfilment of the conditions specified by section 15.

Grounds on which a domestic partnership is voidable

19 (1) A domestic partnership is voidable on the following grounds only, that is to say—

- (a) that either party to the domestic partnership did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise;

- (b) that at the time of the domestic partnership either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder within the meaning of the Mental Health Act 1968 of such a kind or to such an extent as to be unfit for domestic partnership.
- (c) that the petitioner was unaware that at the time of the domestic partnership the respondent was suffering from venereal disease in a communicable form; or
- (d) that the petitioner was unaware that at the time of the domestic partnership the respondent was pregnant by some person other than the petitioner.

(2) In subsection (1)(c) and (d), “petitioner” and respondent” mean the parties to an application under the Matrimonial Causes Act 1974, as applied by section 41.

Effect of defect in formalities or procedures

20 (1) Save as provided in section 18, a defect in compliance with the formalities or procedures required under this Act does not, in itself, render a domestic partnership void.

(2) However, nothing in this section exempts the Registrar, a Deputy Registrar or a domestic partnership officer who does anything contrary to the provisions of this Act from any penalty for an offence under this Act.

Registration

Registration of domestic partnerships

21 (1) The Registrar shall keep at the office of the Registrar-General the General Register of Domestic Partnerships in which all domestic partnerships entered into in Bermuda shall be recorded as provided by this section.

(2) Immediately after a domestic partnership has been formalised by the Registrar, he shall enter a statement of the domestic partnership in the prescribed form in the General Register of Domestic Partnerships, which shall be signed by—

- (a) the Registrar;
- (b) the parties to the domestic partnership; and
- (c) two credible witnesses to the domestic partnership,

and give a copy to the parties.

(3) Immediately after a domestic partnership has been formalised by a domestic partnership officer he shall prepare a statement of the domestic partnership in the prescribed form, which statement shall be signed by—

- (a) the domestic partnership officer;
- (b) the parties to the domestic partnership; and

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(c) two credible witnesses to the domestic partnership,
and given to the parties.

(4) The domestic partnership officer shall as soon as practicable transmit to the Registrar a duplicate of the statement prepared under subsection (3) similarly signed, and the duplicate statement shall be filed by the Registrar and preserved among the records of the office of the Registrar-General, and the Registrar shall enter a true copy thereof in the General Register of Domestic Partnerships.

(5) In the case of a domestic partnership formalised in extremis under section 15—

- (a) the requirement as to the signing of the statement by the parties to the domestic partnership shall be waived so far as regards any party unable to sign;
- (b) there shall be endorsed on the statement a certificate in the prescribed form signed by—
 - (i) the Registrar or the domestic partnership officer who formalised the domestic partnership;
 - (ii) any party to the domestic partnership able to sign; and
 - (iii) two credible witnesses to the domestic partnership, one of whom shall be the medical practitioner referred to in section 15;
- (c) the Registrar shall insert the words "in extremis" in the entry to be made in the General Register of Domestic Partnerships.

Any person may search register and obtain copies of particulars

22 Any person may, during business hours and on payment of the prescribed fee, search the entries in the General Register of Domestic Partnerships and may have true copies certified under the hand and seal of the Registrar of all particulars recorded in any such entry.

Registrar may require information

23 (1) The Registrar may, for the purpose of completing or rectifying the registration of any domestic partnership, require any person—

- (a) who is required by this Act to give any notice or statement relating to the domestic partnership; or
- (b) who may reasonably be expected to have knowledge of the true facts relating to the domestic partnership,

to make any written declaration or to give any information within his knowledge relating to the domestic partnership, and to attend at the office of the Registrar-General for the purpose of making the declaration or giving the information.

(2) If the Registrar thinks fit he may require any such declaration or information to be made or given on oath.

Alterations and amendments of the register

24 (1) No alteration in the General Register of Domestic Partnerships shall be made except as authorised by this section.

(2) Any clerical error which may from time to time be discovered in the register may be corrected by the Registrar or by any person authorised by him in that behalf; and where any such correction is made a note to that effect shall be inserted in the register and shall be signed by the Registrar.

(3) Any error of fact or substance in the Register may be corrected by the Registrar in cases where he is satisfied as to the truth of the correction.

(4) The correction shall be made by entry in the Register (without any alteration in the original entry) and a note to that effect shall be inserted in the Register and shall be signed by the Registrar.

(5) Where a person applies for the correction of an error of fact or substance, the Registrar, if satisfied as to the truth of the correction, and upon payment of the prescribed fee, may make the correction in the manner set out in subsection (4) upon production to him by the applicant of a sworn declaration in writing setting out—

- (a) the nature of the error; and
- (b) the true facts of the case,

and made and signed by a person required to make any statement under the provisions of this Act relating to the domestic partnership to which the application relates, or by any two credible persons having knowledge of the truth of the case.

Domestic partnership officers

Appointment of domestic partnership officers

25 (1) A person may apply in writing to the Minister to be appointed as a domestic partnership officer and shall give his full name, address and date of birth, and such other particulars as may be prescribed.

(2) The Minister may appoint a person as a domestic partnership officer if the Minister, after consulting the Registrar, is satisfied—

- (a) that the person is of good character;
- (b) that the person is able to, and will, conscientiously perform the duties of a domestic partnership officer under this Act; and
- (c) that the appointment is in the public interest.

(3) The Registrar shall give notice in the Gazette of the name of every person who is appointed as a domestic partnership officer.

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(4) A person named in a notice given under subsection (3) is entitled to act as a domestic partnership officer on and from the date specified in the notice until his appointment ceases under section 26.

Ceasing to be a domestic partnership officer

26 (1) A person ceases to be a domestic partnership officer—

- (a) in the case of a person who resigns, on the date on which the Registrar receives his written notice of resignation; or
- (b) in the case of a person whose appointment is cancelled by the Minister under this section, on the date referred to in subsection (5).

(2) The Minister, after consulting the Registrar, may cancel a person's appointment as a domestic partnership officer if he is no longer satisfied, with respect to the person, as to any of the matters set out in section 25(2).

(3) The Minister shall not cancel a person's appointment as a domestic partnership officer without first—

- (a) giving the person notice that he is considering cancelling the appointment;
- (b) giving the person a reasonable opportunity to make submissions on the proposed cancellation; and
- (c) considering any submissions made by the person within that time.

(4) The Registrar shall give notice in writing to the person concerned of the Minister's decision to cancel the person's appointment as a domestic partnership officer, and also of any decision not to proceed with a proposed cancellation.

(5) If a person's appointment as a domestic partnership officer is cancelled, the notice from the Registrar must specify the date on which the cancellation takes effect, which must be a date not sooner than five days after the date on which the notice is sent.

Publication of list of domestic partnership officers

27 (1) The Registrar shall keep affixed in a conspicuous place in the office of the Registrar-General a list showing the names of all domestic partnership officers appointed under section 25.

(2) The Registrar shall, at least once every year, publish a list in the Gazette of the names of all current domestic partnership officers, and this list may be combined with any notice given under section 25(3).

(3) The Registrar may at any time publish in the Gazette a list of the names of persons who have ceased to be domestic partnership officers since the latest list under this section was published.

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Deputy Registrars

Deputy Registrars

28 (1) The Minister may appoint a public officer or a domestic partnership officer to be a Deputy Registrar for the purpose of formalising a domestic partnership under section 13.

(2) A Deputy Registrar shall be appointed on such terms and conditions as the Minister may determine and shall act in accordance with the directions of the Registrar.

(3) A person who ceases to be a domestic partnership officer under section 26 shall at the same time cease to be a Deputy Registrar.

Protection for marriage officers

Provision in respect of marriage officers

29 (1) For the avoidance of doubt, a person granted a licence as a marriage officer under—

- (a) the Marriage Act 1944;
- (b) the Jewish Marriage Act 1946;
- (c) the Baha'i Marriage Act 1970;
- (d) the Muslim Marriage Act 1984; or
- (e) the Maritime Marriage Act 1999,

is not authorised to formalise a domestic partnership unless he is also appointed as a domestic partnership officer under this Act.

(2) No marriage officer appointed under any of the enactments listed in subsection (1)(a) to (d) shall be compellable to permit the use of any place of worship under his control for the formalisation of a domestic partnership.

Maritime domestic partnerships

Maritime domestic partnerships: interpretation

30 In sections 31 to 35—

“Bermuda ship” has the meaning given in section 2(1) of the Merchant Shipping Act 2002;

“high seas” means all parts of the sea that are not included in the territorial sea or the internal waters of a state or territory;

“master” includes every person (except a pilot) having command or charge of any ship;

“Registrar of Shipping” means the Registrar of Shipping appointed under the Merchant Shipping Act 2002.

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Maritime domestic partnerships: domestic partnership officers

31 (1) The Minister may grant a licence to the master of a Bermuda ship to be a domestic partnership officer for the purposes of this Act.

(2) An application for the grant to a master of a licence to be a domestic partnership officer shall be made in writing to the Minister and shall state the full name of the applicant, his address and date of birth, and shall contain such other particulars as may be prescribed.

(3) An application shall be forwarded to the Registrar of Shipping accompanied by a certificate of the applicant's qualifications to be a master of a Bermuda ship and a letter of his appointment to serve on board a Bermuda ship.

(4) The Registrar of Shipping on being satisfied that the application contains sufficient information to enable it to be considered by the Minister, shall forward the application to the Registrar with his recommendation on the application.

(5) Every licence granted by the Minister under this section shall have effect as from such date and shall be valid for such period as may be specified in the licence, and may, by the terms of the licence, limit to any particular ship or ships the functions of the master so licensed.

(6) A licence granted by the Minister under this section shall be in the prescribed form.

(7) The Registrar shall give notice in the Gazette as soon as practicable after the grant of a licence under this section.

(8) The Minister may at any time and without assigning any reason revoke a licence granted by him under this section.

(9) A domestic partnership officer may at any time by notice in writing to the Minister surrender his licence.

(10) The Registrar shall give notice in the Gazette of every revocation of a licence under subsection (8) or surrender of licence under subsection (9).

Maritime domestic partnerships: provisional domestic partnership officers

32 (1) The Minister may grant a licence to a person who is the second in command to the master of a Bermuda ship to be a provisional domestic partnership officer for the purposes of this Act.

(2) The making of an application for a licence under subsection (1) and the way the application is dealt with shall be the same as an application for a licence under section 31(2) to (4).

(3) Section 31(5) to (10) shall apply, with necessary modifications, to a licence granted under subsection (1).

(4) Notwithstanding subsections (2) and (3), a licence granted under subsection (1) shall be granted subject to the condition that the licensee shall formalise a domestic partnership ceremony only if he is, at the time scheduled for the formalisation of the

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domestic partnership, the master of a ship; and he shall be deemed to be a domestic partnership officer for that purpose.

Maritime domestic partnerships: register of domestic partnership officers

33 The Registrar shall keep affixed in a conspicuous place in the office of the Registrar-General a list showing the names of all domestic partnership officers licensed under section 31 and the names of the ships on which they are serving.

Maritime domestic partnerships: general provisions

34 (1) Subject to the requirements of this Act relating to notice of domestic partnership and the issue of a licence for domestic partnership, a domestic partnership may be formalised before a domestic partnership officer on the high seas under the authority of a licence for domestic partnership.

(2) A domestic partnership may be formalised before a domestic partnership officer on the high seas without notice of domestic partnership or the issue of any licence for domestic partnership under the authority of a special licence.

(3) A domestic partnership in extremis may be formalised on the high seas by a domestic partnership officer in accordance with section 15.

(4) A domestic partnership formalised in the manner provided in this Act on board Bermuda ships on the high seas before a domestic partnership officer shall be as valid in law as if it had been formalised in Bermuda.

(5) In this section, “domestic partnership officer” means one granted a licence under section 31 or 32.

Maritime domestic partnerships: notices and register

35 (1) The Registrar shall indicate on any notice published in relation to a maritime domestic partnership that it relates to a maritime domestic partnership.

(2) The General Register of Domestic Partnerships shall contain a separate part for the registration of maritime domestic partnerships.

Overseas relationships treated as domestic partnerships

Meaning of “overseas relationships”

- 36 (1) For the purposes of this Act, “overseas relationship” means a relationship—
- (a) which is either a specified relationship or a relationship which meets the general conditions in section 37(4), and
 - (b) which is registered (whether before or after the commencement date) with a responsible authority in a country or territory outside Bermuda in accordance with the relevant law, by two people neither of whom is already in a domestic partnership or lawfully married;

but does not include marriage contracted between parties who are respectively male and female.

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(2) In this section and sections 37 to 39, “relevant law” means the law of the country or territory where the relationship is registered, including its rules of private international law.

Specified relationships and the general conditions

37 (1) “Specified relationship” means one of the relationships listed by reference to the respective overseas jurisdictions listed in Schedule 2.

(2) The Minister may by order amend Schedule 2.

(3) No order shall be made under subsection (2) to add an overseas relationship to the list in Schedule 2 unless the Minister is satisfied that it is established or recognised under the relevant law and meets the general conditions.

(4) The “general conditions” are that the relevant law—

- (a) prohibits a person from entering into the relationship if either party is already a party to a similar relationship or married, and requires that during the relationship the parties may not enter into another similar relationship or marry anyone else;
- (b) requires that the parties explicitly consent to entering into the relationship;
- (c) provides that the relationship ends only—
 - (i) on the death of a party; or
 - (ii) by a judicial or other process that would be recognised under the law of Bermuda as a dissolution or annulment; and
- (d) does not permit or recognise the relationship if the parties are related as—
 - (i) parent and child (including an adopted child);
 - (ii) siblings or half-siblings; or
 - (iii) grandparent and grandchild.

Overseas relationships treated as domestic partnerships

38 (1) Two people are to be treated as having entered into a domestic partnership as a result of having registered an overseas relationship under the relevant law if, under that law, they—

- (a) had capacity to enter into the relationship; and
- (b) met all requirements necessary to ensure the formal validity of the relationship.

(2) Subject to subsection (3), the date on which the parties are to be treated as having entered into the domestic partnership is—

- (a) the date on which the overseas relationship is registered (under the relevant law) as having been entered into; or

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(b) if later, the date on which both parties have attained the age of 18 years.

(3) If the overseas relationship is registered (under the relevant law) as having been entered into before the commencement date, then, from the commencement date, the parties are to be treated as having entered into a domestic partnership—

(a) on the date on which the overseas relationship was registered (under the relevant law) as having been entered into; or

(b) if later, the date on which both parties have attained the age of 18 years.

(4) But subsection (3) does not apply if a dissolution or annulment of the overseas relationship was obtained outside Bermuda which would be recognised in Bermuda had the overseas relationship been treated as a domestic partnership at the time of the dissolution or annulment.

(5) The Minister may by regulations make such further provision as he considers necessary or expedient with respect to the treating of overseas relationships as domestic partnerships in Bermuda.

Public policy exception

39 Two people are not to be treated as having entered into a domestic partnership as a result of having entered into an overseas relationship if it would be manifestly contrary to public policy to recognise the capacity, under the relevant law, of one or both of them to enter into that relationship.

Breakdown, dissolution and financial relief

Application of Matrimonial Proceedings (Magistrates' Courts) Act and Rules 1974

40 (1) Subject to this section, the Matrimonial Proceedings (Magistrates' Courts) Act 1974 ("the Act") and the Magistrates' Courts (Matrimonial Proceedings) Rules 1974 ("the Rules") apply to proceedings brought in respect of a domestic partnership as they apply in respect of matrimonial proceedings, with the necessary modifications; and in their application the Act and Rules shall, in particular, be read as if the following adaptations were made.

(2) The words "marriage" and "matrimonial" shall in each place be read as "domestic partnership".

(3) In section 2(1) of the Act, the words "A married woman or a married man" shall be read as "A domestic partner".

(4) Section 3(1) of the Act shall be read as if—

(a) in paragraph (b), the words "the husband shall pay to the wife" were "one domestic partner shall pay to the other"; and

(b) paragraph (c) were omitted.

(5) Section 9A of the Act shall be read as if—

(a) the following were substituted for subsection (7)—

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“(7) This section and section 9B shall apply to two people who are living with each other in the same household as domestic partners and to former domestic partners as it applies to the parties to a domestic partnership.”;

(b) in subsection (8)—

(i) the following were substituted for paragraph (b)—

“(b) two people live with each other as domestic partners in the same household;”;

and

(ii) the word “spouses” (in both places) were “domestic partners”.

(6) The Forms in the Schedule to the Rules shall be modified accordingly.

Application of Matrimonial Causes Act, Rules and Order 1974

41 (1) Subject to this section, the Matrimonial Causes Act 1974 (“the Act”), the Matrimonial Causes Rules 1974 (“the Rules”) and the Matrimonial Causes (Decree Absolute) Order 1974 apply to proceedings brought in respect of a domestic partnership as they apply in respect of matrimonial proceedings, with the necessary modifications; and in their application the Act and Rules shall, in particular, be read as if the following adaptations were made.

(2) The words and expressions listed in the first column of the table shall in each place be read as the corresponding word or expression in the second column—

divorce	dissolution
husband	domestic partner
husband and wife	the parties to a domestic partnership
marriage	domestic partnership
married person	party to a domestic partnership
matrimonial	domestic partnership
remarriage	entering into a subsequent domestic partnership or marriage
spouse	domestic partner
wife	domestic partner

(3) The Act shall be read as if the following provisions were omitted: sections 3, 5(2)(a), 6(1) and (2), 15, 16, 18(2), 31(8), 49, 50, 51 and Schedule 2.

(4) References to sections 15 and 16 of the Act (void and voidable marriages) shall be read as references to sections 18 and 19 of this Act (void and voidable domestic partnerships).

(5) Section 31 of the Act shall be read as if the following were substituted for subsection (1)—

“(1) Either party to a domestic partnership may apply to the court for an order under this section on the ground that the other party to the domestic partnership (in this section referred to as the respondent) has wilfully neglected—

- (a) to provide reasonable maintenance for the applicant; or
 - (b) to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family to whom this section applies.”
- (6) The Rules shall be read as if the following provisions were omitted—
- (a) rules 13, 22, 30, 31, 33(1)(f), 92(5) and (6), 98(6) and (7) and 99(6);
 - (b) in rule 76(1), all words following “opposite party”, and rule 76(2); and
 - (c) any other references, or provisions relating, to “adultery”, “improper association”, “co-respondent” and “party cited”.
- (7) The Forms in the Appendix to the Rules shall be modified accordingly.

Offences in connection with domestic partnerships

Offences

- 42 (1) A person commits an offence if he—
- (a) knowingly and wilfully purports to formalise a domestic partnership without being the Registrar, a Deputy Registrar or a domestic partnership officer;
 - (b) being the Registrar, a Deputy Registrar or a domestic partnership officer, formalises a domestic partnership knowing that the domestic partnership is void on any ground, or knowing that it is an irregular domestic partnership (see subsection (6)), or accepts or publishes a notice, or issues a licence, in respect of any intended domestic partnership knowing that the domestic partnership would be void or irregular;
 - (c) is a party to a domestic partnership, knowing that the domestic partnership is void on any ground and that the other party believes it to be valid;
 - (d) personates any other person in a domestic partnership or enters into a domestic partnership under a false name or description, with intent to deceive the other party to the domestic partnership;
 - (e) in any declaration, notice, statement, certificate, entry, licence or document required by any of the provisions of this Act to be made, given or issued for the purposes of a domestic partnership, declares, states, certifies or enters any material matter or thing which he knows to be false; or
 - (f) attempts or aids or abets the commission of an offence under any of the preceding paragraphs,

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and is liable on conviction on indictment to a term of imprisonment of four years.

(2) Without prejudice to the effect of subsection (1)(c) or (d), a person commits an offence if he—

- (a) is a party to a domestic partnership knowing that it is void on any ground or knowing that it is an irregular domestic partnership (see subsection (6));
- (b) enters into a domestic partnership under a false name or description; or
- (c) attempts or aids or abets the commission of an offence under either of the preceding paragraphs,

and is liable on conviction on indictment to a term of imprisonment of two years, or a fine of \$16,800 or both.

(3) Without prejudice to the effect of subsection (1)(e), a person commits an offence if, in any declaration, notice, statement, certificate, entry, licence or document required by any of the provisions of this Act to be made, given or issued for the purposes of a domestic partnership, he declares, states, certifies or enters any material matter or thing which is false, and is liable on conviction on indictment to a term of imprisonment of one year, or a fine of \$8,400 or both.

(4) A person commits an offence if he attempts to prevent a domestic partnership by pretending that there is any legal impediment to the domestic partnership knowing that the pretence is false, or having no reason to believe that it is true, and is liable on conviction on indictment to a term of imprisonment of two years, or a fine of \$16,800 or both.

(5) Any domestic partnership officer who, without reasonable cause or excuse, fails within seven days after the formalisation of any domestic partnership to transmit to the Registrar a duplicate statement in accordance with section 21 commits an offence against this Act, and is liable on summary conviction to a fine of \$2,000.

(6) For the purpose of this section, “irregular domestic partnership” means a domestic partnership (other than a void domestic partnership or a domestic partnership in extremis) formalised—

- (a) without any notice given of the domestic partnership as required by this Act;
- (b) without the authority, as the case may be,—
 - (i) of a domestic partnership licence issued by the Registrar under by section 9; or
 - (ii) of a special licence granted by the Minister under section 10;
- (c) after the expiration of three months from the date of the issue of a domestic partnership licence or from the date of the grant of a special licence; or
- (d) before the removal of a caveat entered against the issue of a licence.

(7) A prosecution under this section shall not be instituted without the written consent of the Director of Public Prosecutions.

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Extension of bigamy to include domestic partnerships

43 Section 201 of Criminal Code Act 1907 (bigamy) is repealed and replaced as follows—

“Bigamy

201 (1) Any person who is married or in a domestic partnership and who purports to—

- (a) marry any other person during the life of his spouse or domestic partner;
- (b) marry any person whom he knows to be married or in a domestic partnership;
- (c) enter into a domestic partnership with any other person during the life of his spouse or domestic partner;
- (d) enter into a domestic partnership with any person whom he knows to be married or in a domestic partnership;

is liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

(2) This section does not extend—

- (a) to any person whose marriage or domestic partnership with such husband, wife or domestic partner has been dissolved or declared void by a court of competent jurisdiction;
- (b) to any person who contracts a marriage or enters into a domestic partnership during the life of a former husband, wife or domestic partner, if such husband, wife or domestic partner, at the time of the subsequent marriage or domestic partnership, has been absent from such person for the period of seven years, and has not been heard of by such person as being alive within that time.

(3) In this section, “domestic partner” and “domestic partnership” have the meanings given in the Domestic Partnership Act 2017.

(4) This section applies to a person in an overseas relationship treated as a domestic partnership in accordance with section 38 of that Act as it applies to a person in a domestic partnership.”

Miscellaneous

Evidence of domestic partnership by means of Register

44 Every entry in the General Register of Domestic Partnerships kept by the Registrar under this Act, and every copy of any such entry purporting to be certified as a true copy under the hand and seal of the Registrar, shall be received in all courts and in all proceedings whatsoever as evidence of the domestic partnership to which the entry relates.

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Information may be recorded in electronic form

45 The information contained in any register, book or other document required to be kept by the Registrar under this Act may be recorded and kept by him in electronic form or such other form as he thinks fit, provided that it is possible to inspect the information and to produce a copy of it in legible form.

Use of foreign language

46 Where any party to a domestic partnership is not conversant with the English language, then the statements and declarations required by this Act to be used in the formalisation of the domestic partnership shall, so far as they affect or are to be used by that party, be made in the language which that party commonly uses.

Annual report

47 The Registrar shall within ninety days after the expiration of every calendar year, compile for publication in such form and manner as the Minister may approve, a summary of the domestic partnerships registered under this Act during that year.

Application of Human Rights Act 1981

Application of Human Rights Act 1981

48 (1) The following provisions have effect notwithstanding anything to the contrary in the Human Rights Act 1981—

- (a) section 4 (persons must be 18 years of age to enter into a domestic partnership);
- (b) section 29(2) (no marriage officer shall be compellable to permit the use of any place of worship under his control for the formalisation of a domestic partnership);
- (c) sections 36 to 39 (overseas relationships treated as domestic partnerships in Bermuda);
- (d) section 53 (clarification of the law of marriage);
- (e) section 54 (saving for certain same sex marriages);
- (f) Schedule 3 (certain enactments not to be read as if modified in the case of domestic partnerships);
- (g) Schedule 4 (consequential and related amendments).

(2) Section 15(c) of the Matrimonial Causes Act 1974 (which provides that a marriage is void unless the parties are male and female) has effect notwithstanding anything to the contrary in the Human Rights Act 1981.

(3) In the Human Rights Act 1981—

- (a) in section 2(2)(a)(iii), after “marital status” insert “or domestic partnership status”; and

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- (b) after “marital status” in each other place where those words occur, insert “or domestic partnership status”.

Consequential and related amendments

Reference to domestic partnership in any other enactment

49 In any other enactment, unless the context otherwise requires, a reference to a domestic partnership refers to—

- (a) a domestic partnership entered into and registered under and in accordance with this Act; and
- (b) an overseas relationship treated as a domestic partnership under and in accordance with section 38,

and “domestic partner” shall be construed accordingly.

Application by reference of enactments relating to marriage etc

50 (1) In any enactment, whether passed before or after the commencement date, the words and expressions listed in the first column of the table shall, in the case of a person in a domestic partnership, in each place be read as the corresponding word or expression in the second column unless—

- (a) the context otherwise requires;
- (b) the enactment is specifically amended by or under this Act;
- (c) the enactment contains an express provision to the contrary; or
- (d) the enactment is listed in Schedule 3.

conjugal	pertaining to domestic partnership
dissolution (of marriage)	dissolution (of domestic partnership)
divorce	dissolution
divorced	former domestic partner where domestic partnership dissolved
former spouse	former domestic partner where domestic partnership dissolved or annulled
husband	domestic partner
husband and wife	the parties to a domestic partnership
marital	pertaining to domestic partnership
marriage	domestic partnership
married	party to a domestic partnership
marry	enter into a domestic partnership
matrimonial	domestic partnership
next of kin	includes domestic partner
relative	includes domestic partner

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remarriage	entering into a subsequent domestic partnership or marriage
remarry	entering into a subsequent domestic partnership or marriage
separated (of spouses)	separated (of domestic partners)
spouse	domestic partner
widow or widower	surviving domestic partner
wife	domestic partner

(2) The Minister may by order amend the table and the list of enactments in Schedule 3.

Fees

51 The Government Fees Regulations 1976 are amended by inserting the following Head after Head 22—

Head 22A		
Domestic Partnership Act 2017		
(1)	Entering a notice of—	
	(a) an intended domestic partnership under section 7	\$112
	(b) a caveat under section 16	\$58
(2)	Issuing a licence for domestic partnership under section 9	\$58
(3)	Applying for a special licence under section 10	\$30
(4)	Issuing a special licence under section 10	\$678
(5)	Formalising a domestic partnership before the Registrar under section 13—	
	(a) at the office of the Registrar General	\$245
	(b) at an alternative approved location under section 13(4)(b)	\$450
(6)	Copying an entry in the General Register of Domestic Partnerships under section 22	\$35
(7)	Providing express service (within 2 days) on request in connection with paragraph (6) (fee is refundable if deadline not met)	\$24
(8)	Searching the General Register of Domestic Partnerships under section 22	\$24
(9)	Correcting an entry in the General Register of Domestic Partnerships under section 24	\$40
(10)	Applying for a domestic partnership officer licence under section 31 (maritime domestic partnerships)	\$100

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Consequential and related amendments

52 (1) Schedule 4, which makes consequential and related amendments, shall have effect.

(2) The Minister may, by regulations, make such further consequential and related amendments to other enactments as the Minister considers necessary to give effect to this Act.

Provisions relating to marriage

Clarification of the law of marriage

53 Notwithstanding anything in the Human Rights Act 1981, any other provision of law or the judgment of the Supreme Court in *Godwin and DeRoche v The Registrar General and others* delivered on 5 May 2017, a marriage is void unless the parties are respectively male and female.

Saving for certain same sex marriages

54 (1) In this section—

“pre-commencement same sex marriage” means a marriage entered into under the Marriage Act 1944 or the Maritime Marriage Act 1999 during the transitional period by two people of the same sex;

“relevant law” has the meaning given in section 36(2);

“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 immediately before the commencement date.

(2) Notwithstanding sections 48(2) and 53, nothing in this Act affects the validity of a pre-commencement same sex marriage.

(3) Notwithstanding sections 38, 48(2) and 53, nothing in this Act prevents the recognition in Bermuda of a marriage lawfully entered into and registered in an overseas jurisdiction under the relevant law during the transitional period by two people of the same sex if—

(a) both parties met all requirements necessary to ensure the formal validity of the marriage under the relevant law; and

(b) at the time of the marriage each party was domiciled in Bermuda or had capacity to enter into the marriage under the place of his domicile,

provided that both parties were over 18 years of age at the time of the marriage.

(4) In relation to—

(a) a pre-commencement same sex marriage; and

(b) a marriage falling within subsection (3),

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any reference in any enactment to marriage, the parties to marriage or the dissolution of marriage shall be read with the necessary modifications.

Final provisions

Regulations and orders

55 (1) The Minister may make regulations for the purpose of prescribing forms, and generally for the purpose of giving effect to this Act.

(2) Regulations and orders made under this Act are subject to the negative resolution procedure.

Crown binding

56 This Act binds the Crown.

Commencement

57 This Act comes into operation on such day as the Minister may appoint by notice published in the Gazette.

SCHEDULE 1

(Section 6)

PROHIBITED DEGREES OF DOMESTIC PARTNERSHIP

1 A person may not enter into a domestic partnership with his—

- (a) grandparent;
- (b) parent;
- (c) child;
- (d) grandchild;
- (e) sibling;
- (f) parent's sibling;
- (g) sibling's child;
- (h) grandparent's former spouse or domestic partner;
- (i) parent's former spouse or domestic partner;
- (j) spouse's or domestic partner's grandparent;
- (k) spouse's or domestic partner's parent;
- (l) spouse's or domestic partner's child;
- (m) spouse's or domestic partner's grandchild;
- (n) child's former spouse or domestic partner;
- (o) grandchild's former spouse or domestic partner.

2 The prohibited degrees of domestic partnership apply whether the relationships described in paragraph 1 are by the whole blood or by the half blood.

3 In this Schedule, spouse and domestic partner includes a former spouse or former domestic partner, whether alive or deceased, and whether the marriage or domestic partnership was terminated by death, dissolution, or otherwise.

4 (1) Two people who are within the prohibited degrees of affinity, but who are not within the prohibited degrees of consanguinity, may apply to a Judge of the Supreme Court for an order under this paragraph.

(2) On an application under subparagraph (1), the Court may make an order disapplying section 6(1) as it applies to the applicants.

(3) The Registrar of the Court shall send a copy of the order to the Registrar.

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5 The Minister may, by order, amend this Schedule and make such transitional or further provision as he considers necessary in consequence.

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SCHEDULE 2

(Section 37)

SPECIFIED RELATIONSHIPS

List of specified relationships for purposes of section 37

Country or territory	Description
Andorra	unión estable de parella or partnership domestic
Argentina	marriage
Argentina: Autonomous City of Buenos Aires	unión domestic
Australia: Australian Capital Territory	civil partnership
Australia: New South Wales	registered relationship registered
Australia: Queensland	civil partnership
Australia: Tasmania	significant relationship
Australia: Victoria	registered domestic relationship
Austria	eingetragene Partnerschaft
Belgium	cohabitation légale, wettelijke samenwoning or gesetzliches zusammenwohnen
Belgium	marriage
Brazil	marriage
Brazil	união estável or casamento civil homoafetivo
Canada	marriage
Canada: Manitoba	common-law relationship or union de fait
Canada: Nova Scotia	domestic partnership
Canada: Quebec	union civile or civil union
Colombia	unión marital de hecho
Czech Republic	registrované partnersví
Denmark	marriage
Denmark	registreret partnerskab
Ecuador	unión civil
Finland	rekisteröity parisuhde or registrerad partnerskap
France	pacte civil de solidarité
Germany	gleichgeschlechtliche Ehe
Germany	eingetragene lebenspartnerschaft

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Country or territory	Description
Gibraltar	civil partnership
Greenland	nalunaarsukkamik inooqatigiinneq or registreret partnerskab
Hungary	bejegyzett élettársi kapcsolat
Iceland	marriage
Iceland	staðfesta samvist
Ireland	marriage
Ireland	civil partnership
Isle of Man	civil partnership
Jersey	civil partnership
Liechtenstein	eingetragene partnerschaft
Luxembourg	partenariat légal or eingetragene partnerschaft
Malta	Żwieġ bejn l-istess sess
Malta	unjoni ċivili
Mexico: Coahuila	pacto civil de solidaridad
Mexico: Mexico City Federal District	marriage
Mexico: Mexico City Federal District	sociedad de convivencia
Netherlands	geregistreerd partnerschap
Netherlands	marriage
New Zealand	civil union
Norway	marriage
Norway	registrert partnerskap
Portugal	marriage or união de facto
Slovenia	zakon o registraciji istospolne partnerske skupnosti
South Africa	marriage
South Africa	civil partnership
Spain	marriage or pareja de hecho
Sweden	marriage
Switzerland	eingetragene partnerschaft, partenariat enregistré or partnership domestica registrata
United Kingdom: England & Wales	marriage
United Kingdom: England & Wales	civil partnership

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Country or territory	Description
United Kingdom: Northern Ireland	civil partnership
United Kingdom: Scotland	marriage
United Kingdom: Scotland	civil partnership
United States of America (including the unincorporated territories of Guam, the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands)	marriage
United States of America: California	domestic partnership
United States of America: Colorado	the relationship between designated beneficiaries
United States of America: Connecticut	civil union
United States of America: Delaware	civil union
United States of America: Hawaii	civil union
United States of America: Hawaii	reciprocal beneficiary relationship
United States of America: Illinois	civil union
United States of America: Maine	domestic partnership
United States of America: Nevada	domestic partnership
United States of America: New Jersey	civil union
United States of America: New Jersey	domestic partnership
United States of America: Oregon	domestic partnership
United States of America: Rhode Island	civil union
United States of America: Vermont	civil union
United States of America: Washington D.C.	domestic partnership
United States of America: Washington State	state registered domestic partnership
United States of America: Wisconsin	domestic partnership
Uruguay	unión concubinaria

SCHEDULE 3

(Section 50)

ENACTMENTS TO WHICH SECTION 50 DOES NOT APPLY

Application by reference of certain enactments relating to marriage not affected by section 50

1 Section 50 does not apply to the following enactments—

- (a) section 15 of the Evidence Act 1905;
- (b) Married Women's Conveyancing Act 1923;
- (c) Marriage Act 1944;
- (d) Jewish Marriage Act 1946;
- (e) Baha'i Marriage Act 1970;
- (f) Matrimonial Causes Act 1974 and Matrimonial Causes Rules 1974;
- (g) Matrimonial Proceedings (Magistrates' Courts) Act 1974 and Magistrates' Courts (Matrimonial Proceedings) Rules 1974;
- (h) sections 2, 3, 4, 10 and 11 of the Law Reform (Husband and Wife) Act 1977;
- (i) Muslim Marriage Act 1984;
- (j) Maritime Marriage Act 1999.

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SCHEDULE 4

(Section 52)

CONSEQUENTIAL AND RELATED AMENDMENTS

Marriage Act 1944

1 At the end of section 9 of the Marriage Act 1944 (general prerequisites of marriage) insert—

“(4) A marriage may only be celebrated or contracted under this Act between two parties who are respectively male and female.

(5) Subsection (4) applies notwithstanding anything to the contrary in the Human Rights Act 1981.”

Interpretation Act 1951

2 After section 7 of the Interpretation Act 1951 insert—

“Domestic partnerships and domestic partners

7A (1) In every Act and every statutory instrument—

(a) “domestic partnership” means—

(i) a domestic partnership entered into and registered under and in accordance with the Domestic Partnership Act 2017; and

(ii) an overseas relationship that is treated as a domestic partnership in accordance with section 38 of that Act;

(b) “domestic partner” means a party to a domestic partnership.

(3) Section 50 of the Domestic Partnership Act 2017 provides that certain words and expressions pertaining to marriage in any enactment, (whether passed before or after the commencement date of that Act) shall, in the case of a person in a domestic partnership, be read as the specified corresponding word or expression relating to domestic partnership, subject to certain exceptions.”

Matrimonial Causes Act 1974

3 (1) Delete section 1(3) of the Matrimonial Causes Act 1974 and substitute—

“(3) References in this Act to remarriage include references to—

(a) a marriage which is by law void or voidable; and

(b) entering into a domestic partnership, including a domestic partnership which is by law void or voidable.”

(2) In section 15(b) of that Act, after “married” insert “or in a domestic partnership or overseas relationship (as defined in the Domestic Partnership Act 2017)”.

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(3) The provisions of section 15 of that Act become subsection (1) of that section and after that subsection insert—

“(2) Subsection (1)(c) has effect notwithstanding anything to the contrary in the Human Rights Act 1981.”

Maritime Marriage Act 1999

4 At the end of section 5 of the Maritime Marriage Act 1999 (general prerequisites of marriage) insert—

“(4) A marriage may only be contracted under this Act between two parties who are respectively male and female.

(5) Subsection (4) applies notwithstanding anything to the contrary in the Human Rights Act 1981.”

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EXPLANATORY MEMORANDUM

This Bill seeks to make provision for the formalisation and registration of a relationship between adult couples, to be known as a “domestic partnership”, to clarify the law relating to marriage, and to make connected and related provision. Many of the provisions are adapted from the Marriage Act 1944 and the Maritime Marriage Act 1999.

Clause 1 is self-explanatory.

Clause 2 provides definitions for the purposes of the Bill.

Clause 3 gives an overview of domestic partnerships by summarising, subject to the details in the Bill, the rules of capacity to enter into a domestic partnership and the requirements of formalisation and registration of a domestic partnership, and by indicating that the dissolution of a domestic partnership is governed by the Matrimonial Causes Act 1974 as applied by clause 41.

Clause 4 prohibits a person under the age of 18 years from entering into a domestic partnership.

Clause 5 prohibits a person from entering into a domestic partnership if already married or in a domestic partnership or overseas relationship.

Clause 6 subsection (1) prohibits two people from entering into a domestic partnership if they are within the prohibited degrees of domestic partnership as set out in Schedule 1. Subsection (2) provides that this is subject to paragraph 4 of Schedule 1, which allows for a Supreme Court order in certain circumstances to disapply subsection (1).

Clause 7 requires a party to an intended domestic partnership to give notice to the Registrar and to make a statutory declaration confirming the capacity of both parties to enter into the domestic partnership and that there are no other lawful impediments to the intended domestic partnership.

Clause 8 sets out the process for the Registrar to register the particulars of the intended domestic partnership in the Domestic Partnership Notice Register and to keep the notice in a conspicuous place in his office for at least 14 days. The notice must also be published twice in a Bermuda newspaper.

Clause 9 provides for the Registrar to issue a licence to enter into a domestic partnership to the applicant if no lawful impediment to the domestic partnership has been shown to the Registrar's satisfaction and if no caveat has been entered or any caveat has been removed (see clauses 16 and 17).

Clause 10 provides for the Minister, in special or exceptional circumstances, to dispense with the giving of notice and issue of a licence and instead to grant a special licence to enter into a domestic partnership.

Clause 11 provides that a licence or special licence lapses after three months.

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Clause 12 clarifies that a licence authorises, but does not oblige, a domestic partnership officer to formalise the domestic partnership.

Clause 13 sets out the procedure for formalisation of a domestic partnership by the Registrar. Such a formalisation can only take place between the hours specified in subsection (3), and only at the office of the Registrar or an alternative approved location. Subsection (5) provides that, during the formalisation and in the presence of the Registrar and at least two credible witnesses, each party must give a clear statement of the full names of both parties and acknowledge that they are freely joining in a domestic partnership with each other and know of no lawful impediment to the domestic partnership.

Clause 14 sets out the procedure for formalisation of a domestic partnership by a domestic partnership officer on delivery to him of a valid licence or special licence. Subsection (3) provides that a domestic partnership officer may formalise a domestic partnership in any place in Bermuda provided that public access is not barred. Subsection (4) provides that, during the formalisation and in the presence of the domestic partnership officer and at least two credible witnesses, each party must give a clear statement of the full names of both parties and acknowledge that they are freely joining in a domestic partnership with each other and know of no lawful impediment to the domestic partnership. There are no other restrictions as to the procedure for a formalisation.

Clause 15 allows for the formalisation of domestic partnership by a domestic partnership officer without notice or licence in circumstances where one party is dying. The parties must be legally competent to enter into the partnership and one of the witnesses must be a medical practitioner. Such a domestic partnership will not operate as a revocation of a will - this mirrors section 25(3) of the Marriage Act 1944.

Clause 16 provides for the lodging of a caveat with the Registrar by a person who claims to know of any lawful ground why a domestic partnership should not take place. Subsection (4) requires the Registrar to record the caveat in the Domestic Partnership Notice Register and to submit the caveat to a Judge of the Supreme Court.

Clause 17 sets out the powers of the Judge in relation to a caveat. If the Judge is of opinion that no legal ground has been disclosed preventing the domestic partnership, he may order the caveat to be removed. In other cases he shall cause a summons to be issued to the parties to the intended domestic partnership and to the person who lodged the caveat requiring him to show cause. The Judge may determine the matter in a summary way and either confirm the caveat or order it to be removed. If it appears to the Judge that the caveat has been entered on insufficient grounds he may order the person who lodged it to pay compensation to the parties to the intended domestic partnership. Note that clause 42(4) creates a criminal offence if a person attempts to prevent a domestic partnership by pretending that there is any legal impediment to the domestic partnership knowing that the pretence is false, or having no reason to believe that it is true.

Clause 18 provides that a domestic partnership is void in the specified circumstances - the legal effect is as if the formalisation of the domestic partnership had never taken place ie it is void *ab initio*. The circumstances are if the domestic partnership is not formalised by the Registrar, a Deputy Registrar or a domestic partnership officer; lack of capacity of either party (due to age, not being free to enter into the partnership or being within the prohibited degrees); if both parties knowingly and wilfully acquiesce in the formalisation under a false

name or names or without notice or the authority of a licence or special licence; or if it is formalised *in extremis* without satisfying the conditions of clause 15.

Clause 19 provides that a domestic partnership is voidable in the specified circumstances - this means it can be annulled by either party. The circumstances are if either party did not validly consent; if either party was suffering from a mental disorder such as to be unfit for domestic partnership; or if the petitioner was unaware that at the time of the domestic partnership the respondent was suffering from venereal disease in a communicable form, or was pregnant by another person.

Clause 20 clarifies that a defect in compliance with formalities and procedures does not, of itself, render a domestic partnership void.

Clause 21 sets out the procedure for the registration of domestic partnerships in the General Register of Domestic Partnerships by the Registrar, and requires a domestic partnership officer to transmit to the Registrar a copy of the statement of domestic partnership as soon as practicable after the formalisation.

Clause 22 allows a person to search the register on payment of the prescribed fee.

Clause 23 empowers the Registrar to require a declaration or information from a person, including on oath, for the purpose of completing or rectifying the register.

Clause 24 sets out the circumstances in which the register can be amended and the process for making corrections.

Clause 25 allows a person to apply to the Minister for appointment as a domestic partnership officer. Subsection (2) provides that the Minister may appoint a person if satisfied that the person is of good character, will conscientiously perform the duties of a domestic partnership officer, and that the appointment is in the public interest. Subsection (3) requires the Registrar to gazette a notice of all such appointments, and subsection (4) provides that the appointment is valid from the date specified in the notice until the appointment ceases under clause 26.

Clause 26 sets out the circumstances in which a person ceases to be a domestic partnership officer, whether by resignation or if the Minister is no longer satisfied as to any of the matters in clause 25(2).

Clause 27 requires the Registrar to post a list of domestic partnership officers in his office, and to publish a list in the Gazette of domestic partnership officers at least once a year.

Clause 28 provides that the Minister may appoint a public officer or a domestic partnership officer as a Deputy Registrar for the purpose of formalising a domestic partnership under clause 13 in place of the Registrar.

Clause 29 gives statutory protection to a marriage officer by clarifying that he is not authorised to formalise a domestic partnership unless also appointed as a domestic partnership officer, and providing that he is not compellable to permit the use of a place of worship under his control for the formalisation of a domestic partnership.

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Clauses 30 to 35 make special additional provision in relation to maritime domestic partnerships formalised on the high seas on Bermuda registered ships. Clause 30 sets out some definitions.

Clause 31 allows the master of a ship to apply to the Minister to be licensed as a domestic partnership officer.

Clause 32 allows the second-in-command to the master of a ship to apply to the Minister to be licensed as a provisional domestic partnership officer, but he is only able to formalise a domestic partnership when acting as the master of the ship.

Clause 33 requires the Registrar to post a notice in his office of all maritime domestic partnership officers.

Clause 34 sets out some general provisions in relation to maritime domestic partnerships. The procedure and requirements for formalisation are the same as provided by clause 14 or, *in extremis*, clause 15.

Clause 35 requires the Registrar to indicate on a notice if it relates to a maritime domestic partnership, and provides for the register to contain a separate part for maritime domestic partnerships.

Clause 36 subsection (1) defines “overseas relationship” as a relationship which is either a specified relationship (see the list in Schedule 2) or which satisfies the general conditions in clause 37(4), and which is registered (whether before or after the commencement date) with a responsible authority in a country or territory outside Bermuda in accordance with the relevant law, by two people neither of whom is already in a domestic partnership or lawfully married. But an overseas marriage contracted between two parties who are respectively male and female is not an overseas relationship for these purposes, since such a marriage will be recognised in Bermuda and not treated as a domestic partnership. Subsection (2) defines “relevant law” as the law of the country or territory where the overseas relationship is registered, including its rules of private international law.

Clause 37 provides for specified overseas relationships to be listed in Schedule 2 and empowers the Minister to amend the Schedule by order. Additional overseas relationships can only be added to the Schedule if they satisfy the general conditions which are set out in subsection (4).

Clause 38 subsections (1) and (2) provide for an overseas relationship to be treated as a domestic partnership from the date of registration under the relevant (ie overseas) law, or from the date on which both parties attain 18 years of age (if later). Subsection (3) provides that, in the case of an overseas relationship registered under the relevant law before the commencement date, the parties will - on or after the commencement date - be treated as having entered into a domestic partnership on the date of registration under the relevant (ie overseas) law, or on the date on which both parties attain 18 years of age (if later). This means that - from the commencement date onwards - and in particular for the purposes of establishing the length of such a relationship, the time between its registration (or the parties attaining 18 years of age, if later) and before commencement can be counted. Subsection (4) contains an exception if an overseas relationship has been terminated before commencement. Subsection (5) provides a regulation making power.

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Clause 39 sets out the public policy exception. This codifies the rule of private international law which applies in relation to the recognition of overseas marriages in Bermuda.

Clause 40 applies the Matrimonial Proceedings (Magistrates' Courts) Act 1974 and the Magistrates' Courts (Matrimonial Proceedings) Rules 1974 to proceedings brought in respect of a domestic partnership with the necessary modifications, and with certain specified amendments by reference.

Clause 41 applies the Matrimonial Causes Act 1974, the Matrimonial Causes Rules 1974 and the Matrimonial Causes (Decree Absolute) General Order 1974 to proceedings brought in respect of a domestic partnership with the necessary modifications, and with certain specified amendments by reference. Adultery, or its equivalent, will not be a ground for dissolution of a domestic partnership.

Clause 42 creates a number of offences in relation to domestic partnerships.

Clause 43 repeals and replaces section 201 of the Criminal Code Act 1907 to extend the offence of bigamy to a person who purports to marry or enter into a domestic partnership when already married or in a domestic partnership or overseas relationship.

Clause 44 provides that a certified copy of an entry in the register is to be received in all courts as prima facie evidence of the domestic partnership.

Clause 45 allows information in the register etc to be recorded in electronic form.

Clause 46 provides for the use of a foreign language for statements and declarations if a person is not familiar with English.

Clause 47 requires the Registrar to issue an annual report containing a summary of domestic partnerships registered during the year.

Clause 48 provides that clauses 4, 29(2), 36 to 39, 53, 54 and Schedules 3 and 4 have effect notwithstanding the Human Rights Act 1981. It also provides that section 15(c) of the Matrimonial Causes Act 1974 (marriage void unless parties are male and female) has effect notwithstanding the Human Rights Act 1981. Section 2(2)(a)(iii) of the Human Rights Act 1981 is amended to add a reference to domestic partnership status as a protected ground, and references are added in each other place in the Act where there is a reference to marital status.

Clause 49 has effect with respect to references to domestic partnerships in other legislation.

Clause 50 subsection (1) provides that specified words or phrases relating to marriage in other legislation shall, in the case of a person in a domestic partnership, be read as a reference to the corresponding word or phrase relating to domestic partnership as set out in the table, unless the context otherwise requires, the enactment is specifically amended by this Bill or contains an express provision to the contrary, or it is listed in Schedule 3. The effect of this provision is that, subject to those exceptions, the law applying to marriage, spouses and widows and widowers will apply to domestic partnership, domestic partners and surviving domestic partners. Notably the expressions "next of kin" and "relative" will include a domestic partner. Subsection (2) empowers the Minister to amend the table and

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the list in Schedule 3. A reference to this clause is inserted into the Interpretation Act 1951 by Schedule 4.

Clause 51 inserts new Head 22A into the Government Fees Regulations 1976 specifying fees for the purposes of this Bill, which mirror those relating to marriage.

Clause 52 introduces Schedule 4 which makes consequential and related amendments, and empowers the Minister to make further amendments to other legislation by regulation to give effect to this Bill.

Clause 53 provides that, notwithstanding anything in the Human Rights Act 1981, any other provision of law or the judgment of the Supreme Court in *Godwin and DeRoche v The Registrar General and others*, a marriage is void unless the parties are respectively male and female. In addition, and for further clarification, amendments in Schedule 4 to section 9 of the Marriage Act 1944 and section 5 of the Maritime Marriage Act 1999 expressly provide that a marriage may only be entered into under those Acts by two parties who are respectively male and female. This clause must be read with clause 54 which provides savings for certain same sex marriages entered into during the transitional period.

Clause 54 provides that nothing in the Bill shall invalidate any marriages which took place under the Marriage Act 1944 or the Maritime Marriage Act 1999 between two people of the same sex after 5 May 2017 (the date of the Supreme Court judgment in *Godwin and DeRoche v The Registrar General and others*) and before the commencement date (the “transitional period”). Subsection (3) displaces the effect of clause 38 to provide that nothing in the Bill prevents the recognition in Bermuda of a marriage lawfully entered into and registered in an overseas jurisdiction under the relevant law during the transitional period by two persons of the same sex if they were both domiciled in Bermuda or had capacity under the law of their domicile, provided that they were both over 18 years of age at the time of the marriage. Subsection (4) provides for any reference in any enactment to marriage, the parties to marriage or the dissolution of marriage to be read with the necessary modifications in the case of such marriages entered into during the transitional period.

Clause 55 empowers the Minister to make regulations, subject to the negative resolution procedure, to prescribe forms and generally for the purpose of giving effect to the Bill.

Clause 56 provides that the Bill binds the Crown.

Clause 57 provides for commencement by notice.

Schedule 1 sets out the prohibited degrees of domestic partnership. Paragraph 4 allows for an application to be made to the Supreme Court by two persons who fall within the prohibited degrees but are not blood relatives to obtain an order allowing them to enter into a domestic partnership.

Schedule 2 lists the specified relationships by reference to the overseas jurisdictions listed, for the purposes of clause 37.

Schedule 3 lists the enactments to which clause 50 does not apply.

Schedule 4 makes consequential and related amendments.