



# Marriage and Civil Partnership (Scotland) Act 2014

2014 asp 5

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 4th February 2014 and received Royal Assent on 12th March 2014**

An Act of the Scottish Parliament to make provision for the marriage of persons of the same sex; to make further provision as to the persons who may solemnise marriage and as to marriage procedure and the places at which civil marriages may be solemnised; to make provision for the registration of civil partnerships by celebrants of religious or belief bodies; to make provision about gender change by married persons and civil partners; to make a minor correction in relation to registration information; and for connected purposes.

## PART 1

### MARRIAGE

#### CHAPTER 1

##### SAME SEX MARRIAGE

### **1 Marriage of related persons**

(1) The Marriage (Scotland) Act 1977 (“the 1977 Act”) is amended as follows.

(2) In section 2 (marriage of related persons)—

(a) for subsection (1) substitute—

“(1) Subject to subsection (1A), a marriage between persons who are related to each other in a forbidden degree is void if solemnised—

(a) in Scotland; or

(b) at a time when either party is domiciled in Scotland.

(1ZA) For the purposes of subsection (1), a person is related to another person in a forbidden degree if related to that person in a degree specified in Schedule 1.”

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- (b) in subsection (1A), for the words from the beginning to “paragraph,” substitute “A person who is related to another person in a degree specified in paragraph 2 of Schedule 1 (relationships by affinity) is not related to that person in a forbidden degree”,
  - (c) after subsection (1A) insert—
    - “(1C) For the purposes of paragraph 2 of Schedule 1, “spouse” means—
      - (a) in the case of a marriage between persons of different sexes, a wife in relation to her husband or a husband in relation to his wife; and
      - (b) in the case of a marriage between persons of the same sex, one of the parties to the marriage in relation to the other.”,
  - (d) in subsection (7)—
    - (i) for “those provisions” substitute “subsection (1C)(a) as it applies to paragraph 2 of Schedule 1”, and
    - (ii) the word “former” in each place where it appears is repealed, and
  - (e) in subsection (7A)—
    - (i) for “mother” substitute “parent”, and
    - (ii) the words “in either column” are repealed.
- (3) For schedule 1 substitute—

“SCHEDULE 1  
*(introduced by section 2)*”

DEGREES OF RELATIONSHIP

1. ***Relationships by consanguinity***
  - Parent
  - Child
  - Grandparent
  - Grandchild
  - Sibling
  - Aunt or uncle
  - Niece or nephew
  - Great-grandparent
  - Great-grandchild
2. ***Relationships by affinity referred to in section 2(1A)***
  - Child of former spouse
  - Child of former civil partner
  - Former spouse of parent
  - Former civil partner of parent
  - Former spouse of grandparent
  - Former civil partner of grandparent
  - Grandchild of former spouse
  - Grandchild of former civil partner
3. ***Relationships by adoption***
  - Adoptive parent or former adoptive parent

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Adopted child or former adopted child.”.

## **2 Objections to marriage**

In section 5(4) of the 1977 Act (objections to marriage)—

- (a) paragraph (e) is repealed, and
- (b) in paragraph (f), for “than one mentioned in paragraphs (a) to (e) above,” substitute “than—
  - (i) one mentioned in paragraphs (a) to (d) above; or
  - (ii) the ground that the parties are of the same sex,”.

## **3 Preliminaries to marriage**

(1) The 1977 Act is amended as follows.

(2) In section 3 (notice of intention to marry)—

- (a) in subsection (1)—
  - (i) for paragraph (b) substitute—

“(b) if the person has previously been married and the marriage ended on the death of the other party to that marriage, the death certificate of that other party;”, and
  - (ii) after that paragraph insert—

“(ba) if the person has previously been in a civil partnership which ended on the death of the other party to the civil partnership, the death certificate of that other party;”,
- (b) in subsection (2), for “or (b)” substitute “, (b), (ba) or (bb)”, and
- (c) in subsection (5), after paragraph (ii)(b) of the proviso insert “; or
  - (c) if no such certificate has been issued only by reason of the fact that the parties to the intended marriage are of the same sex.”.

(3) In section 7(1) (marriage outside Scotland where a party resides in Scotland), after “(b)” insert “, (ba), (bb)”.

## **4 Meaning of marriage and related expressions in enactments and documents**

(1) References (however expressed) in any enactment to—

- (a) marriage (including a marriage that has ended),
- (b) a person who is (or was) married to another person, and
- (c) two people who are (or were) married to each other,

are references to marriage whether between persons of different sexes or persons of the same sex and to a party (or former party), or as the case may be the parties (or former parties), to such a marriage.

(2) Subsection (3) applies to references (however expressed) in any enactment to two people who—

- (a) are (or were) not married to each other, but
- (b) are (or were) living together as if they were husband and wife.

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- (3) The references include two people of the same sex who are (or were) not married to, nor in civil partnership with, each other but who are (or were) living together as if they were married to each other.
- (4) References (however expressed) in any enactment to two people of the same sex who are (or were) living together as if they were in a civil partnership cease to have effect.
- (5) Subsections (1) to (4)—
  - (a) apply to enactments (other than private Acts) passed or made before the commencement of this section, and
  - (b) do not apply in so far as the enactment, or any other enactment, provides otherwise.
- (6) In so far as being (or having been) married or in a purported marriage is relevant for the operation of any rule of law, the rule of law applies equally in relation to marriage or purported marriage to a person of a different sex and marriage or purported marriage to a person of the same sex.
- (7) Subsections (1) to (6) are subject to an order under subsection (8).
- (8) The Scottish Ministers may by order provide for any of subsections (1) to (6)—
  - (a) to have effect subject to provision made by the order, or
  - (b) not to apply in cases specified in the order.
- (9) An order under subsection (8)—
  - (a) may make different provision for different purposes,
  - (b) may include consequential, supplementary, incidental, transitional, transitory or saving provision,
  - (c) may modify any enactment (including this Act),
  - (d) is (except where subsection (10) applies) subject to the negative procedure.
- (10) An order under subsection (8) which adds to, replaces or omits any part of the text of an Act is subject to the affirmative procedure.
- (11) References (however expressed) in any document to—
  - (a) marriage (including a marriage that has ended),
  - (b) a person who is (or was) married to another person, and
  - (c) two people who are (or were) married to each other,are references to marriage whether between persons of different sexes or persons of the same sex and to a party (or former party), or as the case may be the parties (or former parties), to such a marriage.
- (12) The following expressions in any document have the meanings given—
  - (a) “widow” includes a woman whose marriage to another woman ended with the other woman’s death,
  - (b) “widower” includes a man whose marriage to another man ended with the other man’s death.
- (13) Subsections (11) and (12)—
  - (a) apply to documents executed on or after the commencement of this section, and
  - (b) do not apply in so far as the document provides otherwise.

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(14) In section 26(2) of the 1977 Act (interpretation), after the definition of “authorised registrar” insert—

““marriage” means marriage between persons of different sexes and marriage between persons of the same sex;”

(15) In schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010 (definitions of words and expressions), insert at the appropriate place in alphabetical order—

““marriage” means marriage between persons of different sexes and marriage between persons of the same sex (and any reference to a person being (or having been) married to another person, or to two people being (or having been) married to each other, is to be read accordingly),”

““widow” includes a woman whose marriage to another woman ended with the other woman’s death,”

““widower” includes a man whose marriage to another man ended with the other man’s death,”

## **5 Same sex marriage: further provision**

(1) For the avoidance of doubt, the rule of law which provides for a marriage to be voidable by reason of impotence has effect only in relation to a marriage between persons of different sexes.

(2) In section 1 of the Divorce (Scotland) Act 1976 (grounds of divorce), after subsection (3) insert—

“(3A) For the avoidance of doubt, in relation to marriage between persons of the same sex, adultery has the same meaning as it has in relation to marriage between persons of different sexes.”

## **6 Jurisdiction in proceedings relating to same sex marriages**

Schedule 1, which makes provision about jurisdiction in proceedings relating to same sex marriages, has effect.

## **7 Reset: abolition of defence**

(1) Any rule of law under which a wife who receives or conceals goods stolen by her husband does not commit the offence of reset ceases to apply.

(2) Subsection (1) applies only in relation to things done after the day on which this section comes into force.

# **CHAPTER 2**

## **MARRIAGE BETWEEN CIVIL PARTNERS IN QUALIFYING CIVIL PARTNERSHIPS**

## **8 Marriage between civil partners in qualifying civil partnerships**

(1) The 1977 Act is amended as follows.

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- (2) In section 3 (notice of intention to marry), in subsection (1), after paragraph (ba) (inserted by section 3(2)(a)(ii) of this Act), insert—
- “(bb) if the person is in a qualifying civil partnership within the meaning of section 5(6) with the other party to the intended marriage, an extract from the entry in the civil partnership register relating to the civil partnership;”.
- (3) In section 5 (objections to marriage)—
- (a) in subsection (4)(b), after “partnership” insert “other than a qualifying civil partnership with each other”, and
- (b) after subsection (5) insert—
- “(6) For the purposes of subsection (4)(b) a “qualifying civil partnership” is a civil partnership which—
- (a) was registered in Scotland; and
- (b) has not been dissolved, annulled or ended by death.
- (7) A civil partnership which was registered outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 of the Civil Partnership Act 2004 is to be treated for the purposes of subsection (6) (a) as having been registered in Scotland if—
- (a) the parties to the civil partnership elected Scotland as the relevant part of the United Kingdom under the Order; and
- (b) details of the civil partnership have been sent to the Registrar General of Births, Deaths and Marriages for Scotland.”.

## 9 Power to modify meaning of “qualifying civil partnership”

- (1) The Scottish Ministers may by order modify the meaning of “qualifying civil partnership” given by section 5(6) of the 1977 Act (inserted by section 8(3)(b) of this Act) so as to include civil partnerships registered outside Scotland.
- (2) An order under subsection (1)—
- (a) may make different provision for different purposes,
- (b) may include consequential, supplementary, incidental, transitional, transitory or saving provision,
- (c) may modify any enactment (including this Act),
- (d) is subject to the affirmative procedure.
- (3) Before laying a draft of an order under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult the following persons on a copy of the proposed draft order—
- (a) the Registrar General of Births, Deaths and Marriages for Scotland, and
- (b) such other persons as the Scottish Ministers consider appropriate.

## 10 Change of qualifying civil partnership into marriage

- (1) The Scottish Ministers may by regulations make provision to establish a procedure for the parties to a qualifying civil partnership to change their civil partnership into a marriage.
- (2) Regulations under subsection (1) may in particular make provision—

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- (a) about the making by the parties to a qualifying civil partnership of an application to change their civil partnership into a marriage,
  - (b) about the information to be provided in support of an application,
  - (c) about the provision of evidence in support of an application,
  - (d) for persons who have made an application to appear before any person or appear at any place,
  - (e) conferring functions on persons in relation to applications,
  - (f) for fees, of such amounts as are specified in or determined in accordance with the regulations, to be payable in respect of—
    - (i) the making of an application,
    - (ii) the exercise of any function conferred by virtue of paragraph (e).
- (3) Functions conferred by virtue of subsection (2)(e) may include functions relating to—
- (a) the recording of information relating to qualifying civil partnerships changing into marriages,
  - (b) the issuing of certified copies of any information recorded.
- (4) Before making regulations under subsection (1), the Scottish Ministers must consult the Registrar General of Births, Deaths and Marriages for Scotland.
- (5) Regulations under subsection (1)—
- (a) may make different provision for different purposes,
  - (b) may include consequential, supplementary, incidental, transitional, transitory or saving provision,
  - (c) may modify any enactment (including this Act),
  - (d) are (except where subsection (6) applies) subject to the negative procedure.
- (6) Regulations under subsection (1) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.
- (7) In this section “qualifying civil partnership” has the meaning given by section 5(6) of the 1977 Act (inserted by section 8(3)(b) of this Act).

## **11 Effect of marriage between civil partners in a qualifying civil partnership**

- (1) This section applies where civil partners in a qualifying civil partnership (within the meaning of section 5(6) of the 1977 Act)—
- (a) marry in accordance with that Act, or
  - (b) change their civil partnership into a marriage in accordance with provision made under section 10(1).
- (2) Where this section applies—
- (a) the qualifying civil partnership ends on the date on which—
    - (i) the marriage was solemnised, or
    - (ii) the change took effect, and
  - (b) the civil partners are to be treated as having been married to each other since the date on which the qualifying civil partnership was registered.
- (3) For the purposes of subsection (2)(b)—

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- (a) a civil partnership registered under an Order in Council made under section 210 of the 2004 Act is to be treated as having been registered when it is entered in the Register Book maintained under the Order,
  - (b) a civil partnership registered under an Order in Council made under section 211 of the 2004 Act is to be treated as having been registered when the civil partnership register is signed in accordance with the Order.
- (4) Subsection (2)(b) is subject to—
- (a) any provision to the contrary made by or under any enactment,
  - (b) an order under subsection (5).
- (5) The Scottish Ministers may by order provide for subsection (2)(b)—
- (a) to have effect subject to provision made by the order, or
  - (b) not to apply in cases specified in the order.
- (6) An order under subsection (5)—
- (a) may include consequential, supplementary, incidental, transitional, transitory or saving provision,
  - (b) is subject to the negative procedure.
- (7) If a decree of aliment under section 3 of the Family Law (Scotland) Act 1985 (powers of court in action for aliment) requiring one of the civil partners to make payments to the other is in force at the time the qualifying civil partnership ends by virtue of subsection (2)(a) of this section, the decree continues to have effect despite the ending of the civil partnership.
- (8) If an order under section 103(3) or (4) of the 2004 Act (regulation by court of rights of occupancy of family home) is in force at the time the qualifying civil partnership ends by virtue of subsection (2)(a) of this section the order has effect from that time as if made under section 3(3) or, as the case may be, 3(4) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (regulation by court of rights of occupancy of matrimonial home).
- (9) In section 1 of the 2004 Act (provision for civil partnership), after subsection (3) insert —
- “(3A) Subsection (3) is subject to section 11(2)(a) of the Marriage and Civil Partnership (Scotland) Act 2014 (ending of certain civil partnerships on marriage under Scots law).”.

## CHAPTER 3

### SOLEMNISATION OF MARRIAGE

#### 12 Persons who may solemnise marriage

- (1) The 1977 Act is amended as follows.
- (2) In section 8 (persons who may solemnise marriage)—
- (a) in subsection (1)—
    - (i) after “marriage” in the first place where it appears insert “between persons of different sexes”,



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- (ii) in paragraph (a)(ii)—
    - (A) for “or priest of a religious body” substitute “priest or other celebrant of a religious or belief body”,
    - (B) for “religious body” in the second place it appears substitute “religious or belief body”, and
    - (C) for “marriages” substitute “marriage between persons of different sexes”,
  - (iii) in paragraph (a)(iii), after “Act” insert “to solemnise marriage between persons of different sexes”, and
  - (iv) in paragraph (a)(iv), after “Act” insert “to solemnise marriage between persons of different sexes”,
- (b) after subsection (1) insert—
- “(1A) The Scottish Ministers may prescribe a religious or belief body under subsection (1)(a)(ii) only if—
- (a) the body requests them to do so; and
  - (b) the Scottish Ministers are satisfied that the body meets the qualifying requirements.
- (1B) Subject to section 23A, a marriage between persons of the same sex may be solemnised by and only by—
- (a) a person who is—
    - (i) a minister, clergyman, pastor, priest or other celebrant of a religious or belief body prescribed by regulations made by the Scottish Ministers, or who, not being one of the foregoing, is recognised by a religious or belief body so prescribed as entitled to solemnise marriage between persons of the same sex on its behalf;
    - (ii) registered under section 9 to solemnise marriage between persons of the same sex; or
    - (iii) temporarily authorised under section 12 to solemnise marriage between persons of the same sex; or
  - (b) a person who is a district registrar or assistant registrar appointed under section 17.
- (1C) The Scottish Ministers may prescribe a religious or belief body under subsection (1B)(a)(i) only if—
- (a) the body requests them to do so; and
  - (b) the Scottish Ministers are satisfied that the body meets the qualifying requirements.
- (1D) For the avoidance of doubt, nothing in subsection (1B)(a) or (1C)(a) —
- (a) imposes a duty on any religious or belief body to make a request referred to in subsection (1C)(a);
  - (b) imposes a duty on any such body to nominate under section 9 any of its members to be registered as empowered to solemnise marriages between persons of the same sex;

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- (c) imposes a duty on any person to apply for temporary authorisation under section 12 to solemnise marriages between persons of the same sex;
  - (d) imposes a duty on any person who is an approved celebrant in relation to marriages between persons of the same sex to solemnise such marriages.
- (1E) In subsections (1A)(b) and (1C)(b), the “qualifying requirements” are such requirements as may be set out in regulations made by the Scottish Ministers.
- (1F) Regulations under subsection (1E)—
- (a) may make different provision for different cases or circumstances;
  - (b) may include transitional and saving provision.
- (1G) Regulations under subsection (1)(a)(ii), (1B)(a)(i) or (1E) are subject to the negative procedure.”, and
- (c) in subsection (2)—
- (i) in paragraph (a)—
    - (A) after “(1)(a)” insert “or (1B)(a)”, and
    - (B) for ““religious marriage”” substitute ““religious or belief marriage””, and
  - (ii) in paragraph (b), after “(1)(b)” insert “or (1B)(b)”.
- (3) In section 14 (form of ceremony to be used by approved celebrant)—
- (a) in paragraph (a), after “or (ii)” insert “or (1B)(a)(i)”, and
  - (b) in paragraph (b), after “or (iv)” insert “or (1B)(a)(ii) or (iii)”.
- (4) In section 26(2) (interpretation)—
- (a) for the definition of “religious body” substitute—
    - ““religious or belief body” means an organised group of people—
    - (a) which meets regularly for religious worship; or
    - (b) the principal object (or one of the principal objects) of which is to uphold or promote philosophical beliefs and which meets regularly for that purpose;”, and
  - (b) after that definition insert—
    - ““religious or belief marriage” has the meaning given by section 8(2)(a);”.

### **13 Registration of nominated persons as celebrants**

- (1) The 1977 Act is amended as follows.
- (2) In section 9 (registration of nominated persons as celebrants)—
- (a) in subsection (1)—
    - (i) for “religious body” substitute “religious or belief body”, and
    - (ii) after “marriages” insert “between persons of different sexes”,
  - (b) after subsection (1) insert—

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- “(1A) A religious or belief body, not being prescribed by virtue of section 8(1B)(a)(i), may nominate to the Registrar General any of its members who it desires should be registered under this section as empowered to solemnise marriages between persons of the same sex.”,
- (c) in subsection (2)—
- (i) after “(1)” insert “or (1A)”,
  - (ii) in paragraph (a), for “religious body” substitute “religious or belief body”, and
  - (iii) in paragraph (d)—
    - (A) the word “religious” is repealed, and
    - (B) after “that body” insert “in relation to solemnising marriages between persons of different sexes or, as the case may be, marriages between persons of the same sex”,
- (d) after paragraph (d) insert “; or
- (e) the nominating body does not meet the qualifying requirements.”,
- (e) after subsection (2) insert—
- “(2A) In subsection (2)(e), the “qualifying requirements” are such requirements as may be set out in regulations made by the Scottish Ministers.
- (2B) Regulations under subsection (2A)—
- (a) may make different provision for different cases or circumstances;
  - (b) may include transitional and saving provision.
- (2C) Regulations under subsection (2A) are subject to the negative procedure.”,
- (f) in subsection (3)—
- (i) after “ceremony” insert “for marriage between persons of different sexes”,
  - (ii) in paragraph (a), for the words from “witnesses,” to “wife;” substitute “witnesses—
    - (i) that they accept each other as husband and wife;
    - (ii) that they accept each other in marriage; or
    - (iii) either or both of sub-paragraphs (i) and (ii);”,
  - (iii) in paragraph (b), for the words from “subsection,” to “wife,” substitute “subsection—
    - (i) that the parties are then husband and wife;
    - (ii) that the parties are then married; or
    - (iii) either or both of sub-paragraphs (i) and (ii);”,and
  - (iv) after “ceremonies” insert “for marriage between persons of different sexes”,
- (g) after subsection (3) insert—

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- “(3A) For the purposes of subsection (2)(b) above, a marriage ceremony for marriage between persons of the same sex is of an appropriate form if it includes, and is in no way inconsistent with—
- (a) a declaration by the parties, in the presence of each other, the celebrant and two witnesses, that they accept each other in marriage;
  - (b) a declaration by the celebrant, after the declaration mentioned in paragraph (a), that the parties are then married,
- and the Registrar General may, before deciding whether to accept or reject a nomination, require the nominating body to produce in writing the form of words used at its marriage ceremonies for marriage between persons of the same sex.”,
- (h) in subsection (4)—
    - (i) after “(1)” insert “or (1A)”, and
    - (ii) in paragraph (b), after “area” insert “or place”,
  - (i) in subsection (5)(a), after “(1)” insert “or (1A)”,
  - (j) after subsection (5) insert—
 

“(5ZA) The register mentioned in subsection (5)(a)(ii) is to be in two parts—

    - (a) the first part containing the details mentioned in subsection (5)(a)(ii) in relation to persons nominated by religious or belief bodies to solemnise marriages between persons of different sexes; and
    - (b) the second part containing those details in relation to persons nominated by religious or belief bodies to solemnise marriages between persons of the same sex.”,
  - (k) in subsection (6), in the proviso, for “religious body” in each place where it appears substitute “religious or belief body”, and
  - (l) the italic cross-heading preceding section 9 becomes “*Religious or belief marriages*”.
- (3) In section 10 (removal of celebrant’s name from register)—
- (a) in subsection (1)—
    - (i) in paragraph (b), after “9(1)” insert “or (1A)”, and
    - (ii) in paragraph (c), after “9(3)” insert “or (3A)”,
  - (b) after that subsection insert—
 

“(1A) In relation to any ground mentioned in subsection (1)(a) to (c), references in this section to removal from and restoration to the register include removal from and restoration to the appropriate part of the register.”, and
  - (c) in subsection (4), after “9(1)” insert “or (1A)”.
- (4) In section 14(b) (form of ceremony to be used by approved celebrant), after “9(3)” insert “or (3A)”.
- (5) In section 24(2)(a) (offences), after “area” insert “or place”.

## 14 Temporary authorisation of celebrants

- (1) The 1977 Act is amended as follows.

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- (2) In section 12 (temporary authorisation of celebrants)—
- (a) in subsection (1), for “person” substitute “member of a religious or belief body”, and
  - (b) after subsection (1) insert—
    - “(1A) The Registrar General may grant an authorisation to a person under subsection (1) only if satisfied that the religious or belief body of which the person is a member meets the qualifying requirements.
    - (1B) An authorisation under subsection (1)(b) may be granted in relation to—
      - (a) only marriages between persons of different sexes;
      - (b) only marriages between persons of the same sex; or
      - (c) both.
    - (1C) The Registrar General may grant an authorisation to a person under subsection (1)(b) to solemnise marriages between persons of the same sex only if the religious or belief body of which the person is a member—
      - (a) is prescribed by virtue of section 8(1B)(a)(i); or
      - (b) has nominated members (whether or not including that person) under section 9(1A) to solemnise marriages between persons of the same sex.
    - (1D) In subsection (1A), the “qualifying requirements” are such requirements as may be set out in regulations made by the Scottish Ministers.
    - (1E) Regulations under subsection (1D)—
      - (a) may make different provision for different cases or circumstances;
      - (b) may include transitional and saving provision.
    - (1F) Regulations under subsection (1D) are subject to the negative procedure.”.
- (3) In section 24 (offences), in subsection (2)(c), for the words from “12(a)” to the end substitute “12 of this Act—
- (i) if authorised under subsection (1)(a) of that section, solemnises a marriage not specified in the authorisation;
  - (ii) if authorised under subsection (1)(b) of that section, solemnises a marriage outwith the period specified in the authorisation;
  - (iii) in either case, solemnises a marriage otherwise than in accordance with such terms and conditions as may be specified in the authorisation;”.

## 15 Religious or belief marriage: further provision

- (1) The 1977 Act is amended as follows.
- (2) In section 6(5) (solemnisation of marriage on date and at place in Marriage Schedule), for “religious marriage” substitute “religious or belief marriage”.

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- (3) In section 11 (alterations to register), in paragraph (a), for “religious body” substitute “religious or belief body”.
- (4) In the title of section 13 (preliminaries to solemnisation of religious marriages), for “**religious marriages**” substitute “**marriages by approved celebrants**”.
- (5) In section 14(a) (form of ceremony to be used by approved celebrant), for “religious body” substitute “religious or belief body”.
- (6) In the title of section 15 (registration of religious marriages), for “**religious marriages**” substitute “**religious or belief marriages**”.
- (7) In section 15(3) (entry in register of marriage on receipt of Marriage Schedule), for “religious marriage” substitute “religious or belief marriage”.

## CHAPTER 4

### SAME SEX MARRIAGE: PROTECTION OF FREEDOM OF EXPRESSION ETC.

#### 16 **Same sex marriage: protection of freedom of expression etc.**

- (1) For the avoidance of doubt, nothing in this Part so far as it makes provision for the marriage of persons of the same sex and as to the persons who may solemnise such marriages affects the exercise of—
  - (a) the Convention right to freedom of thought, conscience and religion,
  - (b) the Convention right to freedom of expression, or
  - (c) any equivalent right conferred by rule of law.
- (2) “Convention right” has the same meaning as in the Human Rights Act 1998.

## CHAPTER 5

### OTHER CHANGES TO MARRIAGE PROCEDURE

#### 17 **Power of district registrar to require evidence of nationality: marriage**

- (1) The 1977 Act is amended as follows.
- (2) In section 3 (notice of intention to marry), after subsection (4) insert—
  - “(4A) A district registrar to whom a notice under subsection (1) is submitted may require the person submitting the notice to provide the district registrar with specified nationality evidence relating to each of the parties to the marriage.
  - (4B) A requirement under subsection (4A) may be imposed at any time—
    - (a) on or after the submitting of the notice under subsection (1); but
    - (b) before the district registrar completes the Marriage Schedule.
  - (4C) In subsection (4A), “specified nationality evidence” means such evidence of that person’s nationality as may be specified in guidance issued by the Registrar General.”

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- (3) In section 7 (marriage outside Scotland where a party resides in Scotland), in subsection (1) for “and (3)” substitute “, (3) and (4A) to (4C)”.

## **18 The Marriage Schedule**

- (1) The 1977 Act is amended as follows.
- (2) In section 6 (the Marriage Schedule)—
- (a) after subsection (1) insert—
- “(1A) Regulations under subsection (1) prescribing the form of the Marriage Schedule may make different provision for different cases or circumstances.”, and
- (b) in subsection (4)(a), for “14 days” in both places where those words appear substitute “28 days”.
- (3) In section 7(2) (issuing of certificate in respect of legal capacity to marry), for “14 days” substitute “28 days”.
- (4) In section 19(1) (period between receipt of marriage notice and solemnisation of marriage), for “14 days” substitute “28 days”.

## **19 Marriage outside Scotland: evidence of dissolution of former civil partnership**

In section 7(1) of the 1977 Act (marriage outside Scotland where a party resides in Scotland), after “3(1)(a),” insert “(aa),”.

## **20 Religious marriages: solemnisation by Church of Scotland deacons**

In section 8(1)(a)(i) of the 1977 Act (solemnisation of marriage by ministers of the Church of Scotland), after “minister” insert “or deacon”.

## **21 Places at which civil marriages may be solemnised**

- (1) The 1977 Act is amended as follows.
- (2) In section 18 (places at which civil marriages may be solemnised)—
- (a) in subsection (1)—
- (i) after paragraph (a) insert—
- “(aa) at an appropriate place in the registration district of the authorised registrar; or
- (ab) with the approval of the Registrar General, at—
- (i) the registration office of another authorised registrar;
- (ii) an appropriate place in the registration district of another authorised registrar; or
- (iii) an appropriate place in Scottish waters.”,
- (ii) paragraph (b) (and the word “or” following it) are repealed, and
- (iii) paragraph (c) is repealed,
- (b) after that subsection insert—

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“(1A) In this section—

“appropriate place” means a place which—

- (a) the parties to the intended marriage and the local registration authority agree is to be the place of solemnisation; and
- (b) is not religious premises;

“local registration authority” means—

- (a) the local registration authority for the registration district which includes the place; or
- (b) where the place is in Scottish waters, the local registration authority for the authorised registrar’s registration district;

“religious premises” means premises which—

- (a) are used solely or mainly for religious purposes; or
- (b) have been so used and have not subsequently been used solely or mainly for other purposes.”, and

(c) subsections (2) to (8) are repealed.

(3) Section 18A (approved places) is repealed.

(4) In section 19 (marriage ceremony and registration of marriage)—

(a) in subsection (4)(a)—

(i) for sub-paragraph (ii) substitute—

“(ii) at an appropriate place (within the meaning given by section 18) in the registration district of the authorised registrar; or”,

(ii) sub-paragraph (iii) (and the word “or” following it) are repealed, and

(iii) in sub-paragraph (iv), for the words “in or on an approved vessel” substitute “at an appropriate place (within the meaning given by section 18)”,

(b) in subsection (4)(b)(ii), for “approved place” substitute “appropriate place (within the meaning given by section 18)”, and

(c) subsection (5) is repealed.

(5) In section 26(2A)(b) (seaward boundary of registration district), for “within a registration district if it” substitute “a place within a registration district if the vessel”.

## 22 **Second marriage ceremony: form of endorsement**

In section 20(2)(d) of the 1977 Act (second marriage ceremony), in the form of the endorsement, the word “19” in both places where it appears is repealed.



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## CHAPTER 6

### SHERIFF COURT JURISDICTION IN RELATION TO DECLARATOR OF MARRIAGE

#### 23 Sheriff court jurisdiction in relation to declarator of marriage

- (1) Section 8 of the Domicile and Matrimonial Proceedings Act 1973 (jurisdiction of the sheriff court in relation to actions for separation, divorce etc.) is amended as follows.
- (2) In subsection (1), before paragraph (a) insert—
  - “(za) an action for declarator of marriage;”.
- (3) After subsection (2) insert—

“(2ZA) The court has jurisdiction to entertain an action for declarator of marriage if (and only if)—

  - (a) either party to the marriage—
    - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the action is begun, or
    - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date, and
  - (b) any of the following requirements is met in relation to either of the parties to the marriage—
    - (i) the party is domiciled in Scotland on the date on which the action is begun,
    - (ii) the party was habitually resident in Scotland throughout the period of one year ending with that date, or
    - (iii) the party died before that date and either—
      - (A) was at death domiciled in Scotland, or
      - (B) had been habitually resident in Scotland throughout the period of one year ending with the date of death.”.
- (4) In subsection (3)—
  - (a) after “declarator of” insert “marriage or of”, and
  - (b) after “subsection (2)” in both places where those words appear insert “, (2ZA)”.
- (5) In subsection (4), after “declarator of” insert “marriage or of”.

## PART 2

### CIVIL PARTNERSHIP

#### 24 Registration of civil partnership

- (1) The Civil Partnership Act 2004 (“the 2004 Act”) is amended as follows.
- (2) In section 85 (formation of civil partnership by registration)—
  - (a) in subsection (1), for paragraph (c) and the words following it substitute—

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- “(c) the approved celebrant or, as the case may be, the authorised registrar.”, and
  - (b) in subsection (4)(b), at the beginning insert “the approved celebrant or, as the case may be,”.
- (3) In section 86 (eligibility)—
- (a) for subsection (2) substitute—
    - “(2) Subject to subsection (3), a person is related to another person in a forbidden degree if related to that person in a degree specified in Schedule 10.”,
  - (b) in subsection (3), for the words from the beginning to “related” in the third place where it appears substitute “A person who is related to another person in a degree specified in paragraph 2 of Schedule 10 (relationships by affinity) is not related to that person”,
  - (c) after subsection (3) insert—
    - “(3A) For the purposes of paragraph 2 of Schedule 10, “spouse” means—
      - (a) in the case of a marriage between persons of different sexes, a wife in relation to her husband or a husband in relation to his wife, and
      - (b) in the case of a marriage between persons of the same sex, one of the parties to the marriage in relation to the other.”,
  - (d) in subsection (5)—
    - (i) after “in” insert “subsection (3A)(a) as it applies to”, and
    - (ii) the word “former” in each place where it appears is repealed, and
  - (e) in subsection (5A)—
    - (i) for “mother” substitute “parent”, and
    - (ii) the words “in either column” are repealed.
- (4) In section 87 (appointment of authorised registrars), before “registration” in the first place where it appears insert “civil”.
- (5) In section 88 (notice of proposed civil partnership), after subsection (6) insert—
- “(7) In this section, “the district registrar” means—
    - (a) where the civil partnership is to be registered in a registration district, the district registrar for that district,
    - (b) where the civil partnership is to be registered in Scottish waters—
      - (i) in the case where the civil partnership is to be registered by an approved celebrant, the district registrar for any registration district,
      - (ii) in the case where the civil partnership is to be registered by an authorised registrar, the district registrar for the registration district of the proposed authorised registrar.”.
- (6) In section 89 (civil partnership notice book), after subsection (2) insert—
- “(3) In this section and sections 90, 91, 92 and 94, “the district registrar” means—
    - (a) where the civil partnership is to be registered in a registration district, the district registrar for that district,
    - (b) where the civil partnership is to be registered in Scottish waters—

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- (i) in the case where the civil partnership is to be registered by an approved celebrant, the district registrar to whom the civil partnership notices were submitted,
  - (ii) in the case where the civil partnership is to be registered by an authorised registrar, the district registrar for the registration district of the proposed authorised registrar.”.
- (7) In section 90 (publicisation)—
  - (a) in subsection (1), for “a district registrar” substitute “the district registrar”,
  - (b) in subsection (2)(b), for “14 days” substitute “28 days”, and
  - (c) in subsection (3), for “91” substitute “91(1)”.
- (8) In section 91 (early registration)—
  - (a) the existing text becomes subsection (1),
  - (b) in that subsection—
    - (i) for “An authorised registrar who” substitute “Where the district registrar”,
    - (ii) for “14 days” substitute “28 days”, and
    - (iii) after “section 90)” insert “the district registrar”, and
  - (c) after that subsection insert—
    - “(2) For the purposes of subsection (1), a request which is made by electronic means is to be treated as in writing if it is received in a form which is legible and capable of being used for subsequent reference.”.
- (9) In section 92 (objections to registration)—
  - (a) in subsection (3), for “at which a notice of proposed civil partnership to which the objection would relate” substitute “of the district registrar”,
  - (b) in subsection (4)(b)—
    - (i) the word “and” following sub-paragraph (i) is repealed, and
    - (ii) after sub-paragraph (ii) insert “, and
    - (iii) where, in the case of a civil partnership to be registered by an approved celebrant, the civil partnership schedule has already been issued to the parties, if possible notify that celebrant of the objection and advise the celebrant not to register the civil partnership pending consideration of the objection.”, and
  - (c) in subsection (5)(a), for the words “not to register the intended civil partners and to notify them” substitute “to take all reasonable steps to ensure that the registration of the civil partnership does not take place and must notify, or direct the district registrar to notify, the intended civil partners”.
- (10) In section 93 (place of registration)—
  - (a) in subsection (1)—
    - (i) after “registered” insert “by an authorised registrar”, and
    - (ii) for the words from “other” in the first place where it appears to the end substitute “other—
      - (a) at the registration office of the authorised registrar,
      - (b) at an appropriate place in the registration district of the authorised registrar, or

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- (c) with the approval of the Registrar General, at—
    - (i) the registration office of another authorised registrar,
    - (ii) an appropriate place in the registration district of another authorised registrar, or
    - (iii) an appropriate place in Scottish waters.”,
  - (b) after that subsection, insert—
    - “(1A) In this section—
      - “appropriate place” means a place which—
        - (a) the parties to the intended civil partnership and the local registration authority agree is to be the place of registration, and
        - (b) is not religious premises,
      - “local registration authority” means—
        - (a) the local registration authority for the registration district which includes the place, or
        - (b) where the place is in Scottish waters, the local registration authority for the authorised registrar’s registration district,
      - “religious premises” means premises which—
        - (a) are used solely or mainly for religious purposes, or
        - (b) have been so used and have not subsequently been used solely or mainly for other purposes.”,
    - (c) subsections (2) and (3) are repealed, and
    - (d) the title of section 93 becomes “**Place of civil registration of civil partnerships**”.
- (11) After section 93 insert—

**“93A Date and place of registration of religious or belief civil partnerships**

- (1) A religious or belief civil partnership may be registered only on the date and at the place specified in the civil partnership schedule.
- (2) But if, for any reason, the civil partnership cannot be registered on that date or at that place and a new date or place is fixed for the registration, the district registrar must—
  - (a) issue another civil partnership schedule under section 94(2) in place of that already issued, specifying the new date or place, or
  - (b) substitute, or direct the approved celebrant to substitute, the new date or place in the civil partnership schedule already issued.
- (3) Subsection (2) does not apply where—
  - (a) the new date is more than 3 months after the date for the registration specified in the civil partnership schedule already issued, or
  - (b) the new place is in a different registration district, is in Scottish waters instead of a registration district or is in a registration district instead of Scottish waters.

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- (4) In a case falling within subsection (3)(a) or (b) the Registrar General may, according to the circumstances—
- (a) direct the district registrar—
    - (i) to issue another civil partnership schedule under section 94(2) in place of that already issued, specifying the new date or place, or
    - (ii) to substitute, or direct the approved celebrant to substitute, the new date or place in the civil partnership schedule already issued,
 (whichever the Registrar General considers the more appropriate), or
  - (b) direct each party to the civil partnership to submit to the district registrar a new notice of proposed civil partnership.”.
- (12) In section 94 (the civil partnership schedule)—
- (a) the existing text becomes subsection (1),
  - (b) in paragraph (b) of that subsection—
    - (i) for “14 days” substitute “28 days”, and
    - (ii) for “91” substitute “91(1)”, and
  - (c) after that subsection insert—
    - “(2) In the case of a civil partnership to be registered by an approved celebrant, the civil partnership schedule completed in accordance with subsection (1) is to be issued by the district registrar to one or both of the parties to the intended civil partnership.
    - (3) The district registrar may not issue the civil partnership schedule on a date earlier than 7 days before the date of the intended civil partnership unless authorised to do so by the Registrar General.”.
- (13) After section 94 insert—

**“94A Persons who may register civil partnerships**

- (1) A civil partnership may be registered by and only by—
  - (a) a person who is—
    - (i) a celebrant of a religious or belief body prescribed by regulations made by the Scottish Ministers, or who, not being a celebrant, is recognised by a religious or belief body so prescribed as entitled to register civil partnerships on its behalf,
    - (ii) registered under section 94B, or
    - (iii) temporarily authorised under section 94E, or
  - (b) a person who is a district registrar or assistant registrar appointed under section 87.
- (2) The Scottish Ministers may prescribe a religious or belief body under subsection (1)(a)(i) only if—
  - (a) the body requests them to do so, and
  - (b) the Scottish Ministers are satisfied that the body meets the qualifying requirements.

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- (3) For the avoidance of doubt, nothing in subsection (1)(a) or (2)(a)—
- (a) imposes a duty on any religious or belief body to make a request referred to in subsection (2)(a),
  - (b) imposes a duty on any such body to nominate under section 94B any of its members to be registered as empowered to register civil partnerships,
  - (c) imposes a duty on any person to apply for temporary authorisation under section 94E to register civil partnerships,
  - (d) imposes a duty on any person who is an approved celebrant in relation to civil partnerships to register civil partnerships.
- (4) In this Part—
- (a) any such person as is mentioned in subsection (1)(a) is referred to as an “approved celebrant”,
  - (b) a civil partnership registered by an approved celebrant is referred to as a “religious or belief civil partnership”,
  - (c) a civil partnership registered by an authorised registrar is referred to as a “civil registration”.
- (5) In subsection (2)(b), the “qualifying requirements” are such requirements as may be set out in regulations made by the Scottish Ministers.

#### **94B Registration of nominated persons as celebrants**

- (1) A religious or belief body, not being prescribed by virtue of section 94A(1)(a)(i), may nominate to the Registrar General any of its members who it desires should be registered under this section as empowered to register civil partnerships.
- (2) The Registrar General must reject a nomination under subsection (1) if in the Registrar General’s opinion—
- (a) the nominating body is not a religious or belief body,
  - (b) the nominee is not a fit and proper person to register a civil partnership,
  - (c) there are already registered under this section sufficient members of the same body as the nominee to meet the needs of that body, or
  - (d) the nominating body does not meet the qualifying requirements.
- (3) In subsection (2)(d), the “qualifying requirements” are such requirements as may be set out in regulations made by the Scottish Ministers.
- (4) Where the Registrar General accepts a nomination made under subsection (1), the Registrar General—
- (a) must determine the period during which the nominee is empowered to register civil partnerships, being a period of not more than 3 years,
  - (b) may determine that the nominee is empowered to register civil partnerships only in such area or place as the Registrar General may specify, and
  - (c) may make acceptance of the nominee’s registration subject to such other conditions as the Registrar General thinks fit.

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- (5) Nothing in subsection (4)(a) prevents the Registrar General from accepting a further nomination of that nominee, in accordance with this section, to take effect at any time after the end of the period determined by the Registrar General under subsection (4)(a).
- (6) The Registrar General must—
- (a) if accepting a nomination made under subsection (1)—
    - (i) so inform the nominee and the nominating body, specifying the period during which the acceptance has effect and any condition to which the acceptance is subject,
    - (ii) enter the name of the nominee, the nominating body and such other particulars as the Registrar General thinks fit in a register which the Registrar General must establish and maintain and which must be made available for public inspection at all reasonable times free of charge,
  - (b) if rejecting a nomination made under subsection (1), by notice in writing inform the nominating body of the reasons for that rejection.
- (7) For the purposes of subsection (6)(b), notice which is given by electronic means is to be treated as in writing if it is received in a form which is legible and capable of being used for subsequent reference.
- (8) If the nominating body is aggrieved by a rejection under this section it may, within 28 days of receiving notice of the rejection, appeal to the Scottish Ministers.
- (9) On any such appeal the Scottish Ministers may—
- (a) direct the Registrar General to accept the nomination, or
  - (b) confirm the rejection of the nomination,
- and must inform the nominating body of their decision and the reason for it; and their decision is final.
- (10) If a reason given for confirming the rejection of a nomination is that the nominating body is not a religious or belief body, the body may, within 42 days of receiving notice of the confirmation, appeal against the decision to the Court of Session and seek the determination of that court as to whether the body is a religious or belief body.
- (11) If—
- (a) the Court determines that the nominating body is a religious or belief body, and
  - (b) the reason mentioned in subsection (10) was the only reason given for confirming the rejection of the nomination,
- the Registrar General must give effect to the determination as if it were a direction under subsection (9)(a) to accept the nomination.

#### **94C Removal of celebrant's name from register**

- (1) Subject to the provisions of this section, the Registrar General may remove the name of a person registered under section 94B from the register on the ground that—
- (a) the person has requested that the person's name should be so removed,

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- (b) the body which nominated the person under section 94B(1) no longer desires that the person should be so registered,
  - (c) the person—
    - (i) has, while registered as an approved celebrant, been convicted of an offence under this Part,
    - (ii) has, for the purpose of profit or gain, been carrying on a business of registering civil partnerships,
    - (iii) is not a fit and proper person to register civil partnerships, or
    - (iv) for any other reason, should not be registered as an approved celebrant.
- (2) The Registrar General may not remove the name of a person from the register on any ground mentioned in subsection (1)(c) unless the Registrar General has given the person at least 21 days notice in writing of the intention to do so.
- (3) For the purposes of subsection (2), notice which is given by electronic means is to be treated as in writing if it is received in a form which is legible and capable of being used for subsequent reference.
- (4) The Registrar General must—
- (a) in the notice given under subsection (2), specify the ground of removal and call upon the person to give any reasons, within the period specified in the notice, why the person’s name should not be removed from the register, and
  - (b) consider any representations made within that period by the person.
- (5) Where a person’s name has been removed from the register on any of the grounds mentioned in paragraph (c) of subsection (1), the person or the body which nominated the person under section 94B(1) may, if aggrieved by the removal, within 28 days of receiving notice of the removal appeal to the Scottish Ministers.
- (6) On an appeal under subsection (5) the Scottish Ministers may give any direction they think proper to the Registrar General as to the removal from, or restoration to, the register of the person’s name; and such direction is final.
- (7) Where a person has received a notice in pursuance of subsection (2), the person must not register a civil partnership unless and until the person’s name is restored to the register or, as the case may be, the Registrar General has decided not to remove the person’s name from the register.

#### **94D Alterations to register maintained under section 94B**

- (1) A body registered in pursuance of section 94B(6)(a)(ii) must notify the Registrar General of any of the following events (if practicable, within 21 days of its occurrence)—
- (a) any change in the name or the address of the body or any amalgamation with any other religious or belief body, giving the name and address of any approved celebrant who is a member of the body so registered,
  - (b) the death of an approved celebrant who is a member of the body so registered,



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- (c) any change of name, address or designation of an approved celebrant who is a member of the body so registered,
  - (d) the cessation of an approved celebrant who is a member of the body so registered from exercising the functions of an approved celebrant, giving the person's name and address.
- (2) The Registrar General must, on receipt of any such notification, make whatever alteration to the register maintained under section 94B the Registrar General considers necessary or desirable.

#### **94E Temporary authorisation of celebrants**

- (1) The Registrar General may, in accordance with such terms and conditions as may be specified in the authorisation, grant to any member of a religious or belief body a temporary written authorisation to register—
    - (a) a civil partnership or partnerships specified in the authorisation, or
    - (b) civil partnerships during such period as is specified in the authorisation.
  - (2) The Registrar General may grant an authorisation to a person under subsection (1) only if satisfied that the religious or belief body of which the person is a member meets the qualifying requirements.
  - (3) The Registrar General may grant an authorisation to a person under subsection (1)(b) only if the religious or belief body of which the person is a member—
    - (a) is prescribed by virtue of section 94A(1)(a)(i), or
    - (b) has nominated members (whether or not including that person) under section 94B(1).
  - (4) In subsection (2), the “qualifying requirements” are such requirements as may be set out in regulations made by the Scottish Ministers.
  - (5) For the purposes of subsection (1), an authorisation which is issued by electronic means is to be treated as written if it is received in a form which is legible and capable of being used for subsequent reference.”
- (14) In section 95 (further provision as to registration)—
- (a) in subsection (1), after “85” insert “the approved celebrant or, as the case may be,”,
  - (b) after subsection (1) insert—
    - “(1A) In the case of a religious or belief civil partnership, the parties to the civil partnership must, within 3 days of signing the civil partnership schedule in accordance with section 85(4), deliver the civil partnership schedule, or send it by post or arrange that it is delivered, to the district registrar.”,
  - (c) in subsection (2), for “after the civil partnership schedule has been signed, the authorised registrar” substitute “after—
    - (a) in the case of a civil registration, the civil partnership schedule has been signed in accordance with section 85, or
    - (b) in the case of a religious or belief civil partnership, the district registrar receives the civil partnership schedule,

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the district registrar”,

(d) after subsection (3) insert—

“(3A) The district registrar must not enter the particulars set out in the civil partnership schedule relating to a religious or belief civil partnership in the civil partnership register unless and until the registrar receives a duly signed civil partnership schedule in respect of that civil partnership.

(3B) Where the Registrar General is satisfied that—

- (a) a civil partnership has been properly registered, and
- (b) the civil partnership schedule in respect of the civil partnership has been duly signed but has been lost or destroyed,

the Registrar General may direct the district registrar to complete an exact copy of the original civil partnership schedule and, so far as practicable, to arrange for its signature by those persons who signed the original schedule.

(3C) As soon as possible after the copy schedule has been signed, the district registrar must cause the particulars as set out in it to be entered into the civil partnership register.”, and

(e) in subsection (4), after “their” insert “civil”.

(15) After section 95 insert—

**“95ZA Registrar’s power to require delivery of civil partnership schedule**

(1) Where the civil partnership schedule is not delivered to the district registrar within 21 days from the date of registration as entered in the schedule, the registrar may serve a notice in the prescribed form on either of the parties to the civil partnership requiring that party within 8 days from the date of service to deliver the schedule, or send it by post, to the registrar.

(2) If a person on whom a notice has been served under subsection (1) fails to comply with the notice, the district registrar may serve on the person a second notice in the prescribed form requiring the person to attend personally at the registration office of the district registrar, within 8 days from the date of service of the second notice, for the purpose of delivering the civil partnership schedule to the district registrar to enable the registrar to enter the civil partnership in the civil partnership register.”.

(16) In section 95A (validity following entry in civil partnership register), in subsection (1), after “95(2)” insert “or (3C)”.

(17) In section 96 (civil partnership with former spouse)—

- (a) in subsection (3)(b), for “91” substitute “91(1)”, and
- (b) in subsection (3)(c), for “paragraph (b)” substitute “subsection (1)(b)”.

(18) In section 97 (certificates of no impediment for Part 2 purposes)—

- (a) in subsection (4), for “14 days” substitute “28 days”, and
- (b) after subsection (5) insert—

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“(5A) For the purposes of subsection (5), an objection which is submitted by electronic means is to be treated as in writing if it is received in a form which is legible and capable of being used for subsequent reference.”.

(19) In section 100 (offences)—

(a) in subsection (2)—

(i) in paragraphs (c), (d) and (e), after “being” insert “an approved celebrant or, as the case may be,”, and

(ii) in paragraph (f), for the words from “a” in the second place where it appears to the end substitute “in accordance with section 93”,

(b) after subsection (3) insert—

“(3A) A person commits an offence if the person—

(a) registers a civil partnership in an area or place in which by virtue of section 94B(4)(b) the person is not permitted to register a civil partnership,

(b) registers a civil partnership in contravention of section 94C(7),

(c) being a person temporarily authorised under section 94E—

(i) if authorised under subsection (1)(a) of that section, registers a civil partnership not specified in the authorisation,

(ii) if authorised under subsection (1)(b) of that section, registers a civil partnership outwith the period specified in the authorisation,

(iii) in either case, registers a civil partnership otherwise than in accordance with such terms and conditions as may be specified in the authorisation,

(d) being a party to a civil partnership, fails to comply with a notice served under section 95ZA(2).

(3B) A person guilty of an offence under subsection (3A) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”, and

(c) in subsection (4), for “or (2)” substitute “, (2) or (3A)”.

(20) In section 126(4) (regulations), after “section” insert “94A(1)(a)(i) or (5), 94B(3), 94E(4) or”.

(21) In section 135(1) (interpretation of Part 3)—

(a) after the definition of “the 1965 Act” insert—

““approved celebrant” has the meaning given by section 94A(4)(a);”,

(b) after the definition of “civil partnership schedule” insert—

““civil registration” has the meaning given by section 94A(4)(c);”, and

(c) after the definition of “registration office” insert—

““religious or belief body” means an organised group of people—

(a) which meets regularly for religious worship, or

(b) the principal object (or one of the principal objects) of which is to uphold or promote philosophical beliefs and which meets regularly for that purpose;

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“religious or belief civil partnership” has the meaning given by section 94A(4)(b);”.

(22) For schedule 10 substitute—

**“SCHEDULE 10**  
*(introduced by section 86)*

**FORBIDDEN DEGREES OF RELATIONSHIP: SCOTLAND**

**1. *Relationships by consanguinity***

Parent  
 Child  
 Grandparent  
 Grandchild  
 Sibling  
 Aunt or uncle  
 Niece or nephew  
 Great-grandparent  
 Great-grandchild

**2. *Relationships by affinity referred to in section 86(3)***

Child of former spouse  
 Child of former civil partner  
 Former spouse of parent  
 Former civil partner of parent  
 Former spouse of grandparent  
 Former civil partner of grandparent  
 Grandchild of former spouse  
 Grandchild of former civil partner.”.

**25 Power of district registrar to require evidence of nationality: civil partnership**

In section 88 of the 2004 Act (notice of proposed civil partnership), after subsection (7) (inserted by section 24(5) of this Act) insert—

“(8) A district registrar to whom a notice under subsection (1) is submitted may require the person submitting the notice to provide the district registrar with specified nationality evidence relating to each of the intended civil partners.

(9) A requirement under subsection (8) may be imposed at any time—

- (a) on or after the submitting of the notice under subsection (1), but
- (b) before the district registrar completes the civil partnership schedule.

(10) In subsection (8), “specified nationality evidence” means such evidence of that person’s nationality as may be specified in guidance issued by the Registrar General.”.

**26 Recognition of overseas relationships**

(1) The 2004 Act is amended as follows.

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(2) In section 214 (general conditions in relation to recognition of overseas relationships)

—  
(a) after paragraph (b) insert—

“(ba) the relationship is not one of marriage,” and

(b) in paragraph (c), for the words from the second “or” to the end substitute “but are not treated as married”.

(3) In schedule 20 to the 2004 Act (specified relationships), the following entries are repealed—

“Argentina	marriage”,
“Belgium	marriage”,
“Brazil	marriage”,
“Canada	marriage”,
“Denmark	marriage”,
“Iceland	marriage”,
“Mexico: Mexico City Federal District	marriage”,
“Netherlands	marriage”,
“Norway	marriage”,
“Portugal	marriage”,
“South Africa	marriage”,
“Spain	marriage”,
“Sweden	marriage”,
“United States of America: California	marriage”,
“United States of America: Connecticut	marriage”,
“United States of America: District of Columbia	marriage”,

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“United States of America: Iowa marriage”,

“United States of America: Massachusetts marriage”,

“United States of America: New Hampshire marriage”,

“United States of America: New York marriage”,

“United States of America: Vermont marriage”.

## 27 Dissolution of civil partnership: evidence

- (1) Article 2 of the 2012 Order (which disapplies from certain actions for dissolution of civil partnership section 8(3A) of the Civil Evidence (Scotland) Act 1988 (requirement for evidence other than that of a party to the civil partnership)) is to be taken to have been in force since 5 December 2005 and to have had effect in relation to actions raised before 30 March 2012 as it has effect in relation to actions raised on or after that date.
- (2) The “2012 Order” is the Evidence in Civil Partnership and Divorce Actions (Scotland) Order 2012 ([SSI 2012/111](#)).

## PART 3

### MARRIAGE AND CIVIL PARTNERSHIP: OTHER PROVISION

## 28 Bigamy

- (1) In section 24 of the 1977 Act (offences)—
  - (a) before subsection (1) insert—
 

“(A1) A person (“A”) commits an offence if A purports to enter into a marriage with another person (“B”) knowing that either or both—

    - (a) A is already married to or in a civil partnership with a person other than B, or
    - (b) B is already married to or in a civil partnership with a person other than A.

(A2) A person who commits an offence under subsection (A1) is liable—

    - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both),
    - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both).”, and
  - (b) in subsection (1)(ii), for “prescribed sum” substitute “statutory maximum”.
- (2) In section 100 of the 2004 Act (offences)—

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- (a) in subsection (1), for “registers” substitute “purports to register”, and
  - (b) in subsection (3)(b), for “level 3 on the standard scale” substitute “the statutory maximum”.
- (3) The common law offence of bigamy is abolished.
- (4) In section 13 of the Presumption of Death (Scotland) Act 1977 (defence to charge of bigamy)—
- (a) for “bigamy” substitute “committing an offence under section 24(A1) of the Marriage (Scotland) Act 1977 or section 100(1) of the Civil Partnership Act 2004”,
  - (b) after “marriage” insert “or civil partnership”, and
  - (c) after “spouse” insert “or civil partner”.

## PART 4

### CHANGE OF GENDER OF MARRIED PERSONS OR CIVIL PARTNERS

#### **29 Change of gender of married persons or civil partners**

Schedule 2 (change of gender of married persons or civil partners) has effect.

#### **30 Renewed marriage or civil partnership following issue of full gender recognition certificate**

- (1) The Scottish Ministers may by regulations make provision about—
- (a) the solemnisation of a renewed marriage between the parties to a protected Scottish marriage following the issue of a full gender recognition certificate to a party (or both parties) to the marriage,
  - (b) the registration of a renewed civil partnership between the parties to a protected Scottish civil partnership following the issue of full gender recognition certificates to both parties to the civil partnership.
- (2) Regulations under subsection (1) may in particular make provision—
- (a) about the submitting by the parties to the protected Scottish marriage of notice of intention to enter into a renewed marriage,
  - (b) about the submitting by the parties to the protected Scottish civil partnership of notice of intention to enter into a renewed civil partnership,
  - (c) about the information to be provided by the parties,
  - (d) about the provision of evidence by the parties,
  - (e) for the parties to appear before any person or appear at any place,
  - (f) conferring functions on persons in relation to a renewed marriage or renewed civil partnership,
  - (g) for fees, of such amounts as are specified in or determined in accordance with the regulations, to be payable in respect of—
    - (i) the submitting of notice of intention to enter into a renewed marriage or renewed civil partnership,
    - (ii) the exercise of any function conferred by virtue of paragraph (f).
- (3) Functions conferred by virtue of subsection (2)(f) may include functions relating to—

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- (a) the recording of information relating to a renewed marriage or renewed civil partnership,
  - (b) the issuing of certified copies of any information recorded,
  - (c) the conducting of services or ceremonies in connection with a renewed marriage or renewed civil partnership.
- (4) Before making regulations under subsection (1), the Scottish Ministers must consult the Registrar General of Births, Deaths and Marriages for Scotland.
- (5) Regulations under subsection (1)—
- (a) may include consequential, supplementary, incidental, transitional, transitory or saving provision,
  - (b) may make provision applying any provision of the 1977 Act or the 2004 Act (either with or without modifications),
  - (c) may modify any enactment (including this Act),
  - (d) are (except where subsection (6) applies) subject to the negative procedure.
- (6) Regulations under subsection (1) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.
- (7) In this section “full gender recognition certificate”, “protected Scottish civil partnership” and “protected Scottish marriage” have the meanings given by section 25 of the Gender Recognition Act 2004.

**31 Grounds of divorce: interim gender recognition certificate followed by full certificate**

- (1) Section 1 of the Divorce (Scotland) Act 1976 (grounds of divorce) is amended as follows.
- (2) In subsection (1)(b) (issue of interim gender recognition certificate as ground on which decree of divorce may be granted), at the beginning insert “subject to subsection (3B),”.
- (3) After subsection (3A) (inserted by section 5(2) of this Act) insert—
- “(3B) Subsection (1)(b)—
- (a) does not apply where, under the Gender Recognition Act 2004, the Gender Recognition Panel issue a full gender recognition certificate to the person to whom the interim gender recognition certificate was issued, but
  - (b) continues to apply despite a full gender recognition certificate being issued to that person by the sheriff under section 4E of that Act.”.



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## PART 5

### REGISTRATION SERVICES

#### **32 Provision of certain information to district registrars**

In section 39C(1)(a)(i) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (provision of certain information to district registrars), for “section 34(3)” substitute “section 34(4)”.

#### **33 Form of register of marriages**

In section 54 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (regulations), after subsection (1) insert—

“(1A) Regulations prescribing the form of a register of marriages under section 32 may make different provision for different cases or circumstances.”.

## PART 6

### GENERAL PROVISIONS

#### **34 Interpretation**

In this Act—

“the 1977 Act” means the Marriage (Scotland) Act 1977,

“the 2004 Act” means the Civil Partnership Act 2004.

#### **35 Ancillary provision**

(1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, or for giving full effect to, any provision of this Act.

(2) An order under subsection (1) may make different provision for different purposes.

(3) An order under subsection (1) may modify any enactment (including this Act).

(4) Subject to subsection (5), an order under subsection (1) is subject to the negative procedure.

(5) An order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.

#### **36 Commencement**

(1) This section and sections 34, 35 and 37 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.

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**37 Short title**

The short title of this Act is the Marriage and Civil Partnership (Scotland) Act 2014.

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## SCHEDULE 1

*(introduced by section 6)*

### JURISDICTION IN PROCEEDINGS RELATING TO SAME SEX MARRIAGES

#### *Domicile and Matrimonial Proceedings Act 1973*

- 1 (1) The Domicile and Matrimonial Proceedings Act 1973 is amended in accordance with this paragraph.
- (2) After section 8 insert—
  - “**8A Same sex marriages**
  - (1) Sections 7 and 8 do not apply in relation to marriages between persons of the same sex.
  - (2) Schedule 1B (jurisdiction in relation to same sex marriages (Scotland)) has effect.”.
- (3) In section 10 (ancillary and collateral orders), after subsection (1B) insert—
  - “(1BA) In relation to a marriage between persons of the same sex, subsection (1) does not give the Court of Session or a sheriff court jurisdiction to entertain an application in proceedings where—
    - (a) the court is exercising jurisdiction in the proceedings by virtue of regulations under paragraph 2 of Schedule 1B; and
    - (b) the making or variation of an order in consequence of the application would contravene the regulations.”.
- (4) Before schedule 2 insert—

## “SCHEDULE 1B

*(introduced by section 8A)*

### JURISDICTION IN RELATION TO SAME SEX MARRIAGES (SCOTLAND)

#### **Introduction**

- 1 (1) This Schedule has effect with respect to the jurisdiction of the Court of Session and of the sheriff court to entertain, in relation to same sex marriages, proceedings for—
  - (a) divorce,
  - (b) separation,
  - (c) declarator of marriage,
  - (d) declarator of nullity of marriage,
  - (e) declarator of recognition, or non-recognition, of a relevant foreign decree.
- (2) References in this Schedule to “relevant proceedings” are to such proceedings as are mentioned in sub-paragraph (1).
- (3) In this Schedule—

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“relevant foreign decree” means a decree of divorce, separation or nullity granted outwith a member State,

“same sex marriage” means a marriage between persons of the same sex.

### **Power to make provision corresponding to EC Regulation 2201/2003**

- 2 (1) The Scottish Ministers may by regulations make provision—
- (a) as to the jurisdiction of courts in Scotland in relevant proceedings in relation to a same sex marriage where one of the parties to the marriage—
    - (i) is or has been habitually resident in a member State,
    - (ii) is a national of a member State, or
    - (iii) is domiciled in a part of the United Kingdom or in the Republic of Ireland, and
  - (b) as to the recognition in Scotland of any judgment of a court of another member State which orders the divorce or separation of the parties to a same sex marriage, or the annulment of a same sex marriage.
- (2) The regulations may in particular make provision corresponding to that made by Council Regulation (EC) No 2201/2003 of 27 November 2003 in relation to jurisdiction and the recognition and enforcement of judgments in matrimonial matters.
- (3) The regulations may provide that for the purposes of this Schedule and the regulations “member State” means—
- (a) all member States with the exception of such member States as are specified in the regulations, or
  - (b) such member States as are specified in the regulations.
- (4) The regulations may make provision under sub-paragraph (1)(b) which applies even in a case where the date of the divorce, separation or annulment is earlier than the date on which this paragraph comes into force.
- (5) The regulations are subject to the affirmative procedure.

### **Divorce or separation**

- 3 (1) The Court of Session has jurisdiction to entertain proceedings for the divorce or separation of the parties to a same sex marriage if (and only if)—
- (a) the Scottish courts have jurisdiction under regulations under paragraph 2, or
  - (b) no court has, or is recognised as having, jurisdiction under those regulations and either party to the marriage is domiciled in Scotland on the date on which the proceedings are begun.
- (2) The sheriff court has jurisdiction to entertain proceedings for the divorce or separation of the parties to a same sex marriage if (and only if)—

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- (a) the requirements of paragraph (a) or (b) of sub-paragraph (1) are met, and
  - (b) either party to the marriage—
    - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
    - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.
- (3) Despite sub-paragraph (2), the sheriff court of the sheriffdom of Lothian and Borders at Edinburgh also has jurisdiction to entertain proceedings for the divorce or separation of the parties to a same sex marriage if the following requirements are met—
- (a) the parties married each other in Scotland,
  - (b) no court has, or is recognised as having, jurisdiction under regulations under paragraph 2, and
  - (c) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

#### **Declarator of marriage**

- 4 (1) In relation to a same sex marriage, the Court of Session has jurisdiction to entertain proceedings for declarator of marriage if (and only if) either of the parties to the marriage—
- (a) is domiciled in Scotland on the date on which the proceedings are begun,
  - (b) was habitually resident in Scotland throughout the period of one year ending with that date, or
  - (c) died before that date and either—
    - (i) was at death domiciled in Scotland, or
    - (ii) had been habitually resident in Scotland throughout the period of one year ending with the date of death.
- (2) In relation to a same sex marriage, the sheriff court has jurisdiction to entertain proceedings for declarator of marriage if (and only if)—
- (a) the requirements of paragraph (a), (b) or (c) of sub-paragraph (1) are met in relation to either party to the marriage, and
  - (b) either party of the marriage—
    - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
    - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.

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### **Nullity of marriage**

- 5 (1) The Court of Session has jurisdiction to entertain proceedings for declarator of nullity of a same sex marriage if (and only if)—
- (a) the Scottish courts have jurisdiction under regulations under paragraph 2, or
  - (b) no court has, or is recognised as having, jurisdiction under those regulations and either party to the marriage—
    - (i) is domiciled in Scotland on the date on which the proceedings are begun, or
    - (ii) died before that date and either was at death domiciled in Scotland or had been habitually resident in Scotland throughout the period of one year ending with the date of death.
- (2) The sheriff court has jurisdiction to entertain proceedings for declarator of nullity of a same sex marriage if (and only if)—
- (a) the requirements of paragraph (a) or (b) of sub-paragraph (1) are met, and
  - (b) either party to the marriage—
    - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
    - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.
- (3) Despite sub-paragraph (2), the sheriff court of the sheriffdom of Lothian and Borders at Edinburgh also has jurisdiction to entertain proceedings for declarator of nullity of a same sex marriage if the following requirements are met—
- (a) the parties married each other in Scotland,
  - (b) no court has, or is recognised as having, jurisdiction under regulations under paragraph 2, and
  - (c) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

### **Recognition, or non-recognition, of foreign decrees**

- 6 (1) The Court of Session has jurisdiction to entertain proceedings for declarator of recognition, or non-recognition, of a relevant foreign decree relating to a same sex marriage if (and only if)—
- (a) the Scottish courts have jurisdiction under regulations under paragraph 2, or
  - (b) no court has, or is recognised as having, jurisdiction under those regulations and either party to the marriage—
    - (i) is domiciled in Scotland on the date on which the proceedings are begun, or

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- (ii) died before that date and either was at death domiciled in Scotland or had been habitually resident in Scotland throughout the period of one year ending with the date of death.
- (2) The sheriff court has jurisdiction to entertain proceedings for declarator of recognition, or non-recognition, of a relevant foreign decree relating to a same sex marriage if (and only if)—
- (a) the requirements of paragraph (a) or (b) of sub-paragraph (1) are met, and
  - (b) either party to the marriage—
    - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
    - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.

### **Supplementary provision**

- 7
- (1) Paragraph 3(1) does not affect any rule of law under which the Court of Session has jurisdiction in certain circumstances to entertain proceedings for separation as a matter of necessity and urgency.
  - (2) Paragraphs 3 and 5 do not affect any jurisdiction of a sheriff court to entertain any proceedings for separation, divorce or declarator of nullity of marriage remitted to the court under any enactment or rule of court, if entertaining the proceedings would not contravene regulations under paragraph 2.
  - (3) At any time when proceedings are pending in respect of which a court has jurisdiction by virtue of any of paragraphs 3 to 6 (or this paragraph), the court also has jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, separation or declarator of marriage or of nullity of marriage even though that jurisdiction would not be exercisable under any of paragraphs 3 to 6.”.

### *Presumption of Death (Scotland) Act 1977*

- 2
- In section 1 of the Presumption of Death (Scotland) Act 1977 (actions of declarator of the death of missing persons), after subsection (4) insert—
- “(4A) Despite subsection (4), the sheriff court of the sheriffdom of Lothian and Borders at Edinburgh also has jurisdiction to entertain an action of declarator if—
- (a) the pursuer in the action and the missing person are married to each other and are of the same sex,
  - (b) they married each other in Scotland, and
  - (c) it appears to the court to be in the interests of justice to assume jurisdiction in the case.”.

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## SCHEDULE 2

*(introduced by section 29)*

### CHANGE OF GENDER OF MARRIED PERSONS OR CIVIL PARTNERS

#### PART 1

#### APPLICATIONS BY MARRIED PERSONS AND CIVIL PARTNERS

##### *Introductory*

- 1 The Gender Recognition Act 2004 is amended in accordance with this Part of this schedule.

##### *Interpretation*

- 2 In section 25 (interpretation)—
- (a) the existing words become subsection (1),
  - (b) in the definitions of “full gender recognition certificate” and “interim gender recognition certificate”, for “5 or 5A” substitute “4C, 4E, 4F, 5, 5A or 5D”,
  - (c) before the definition of “registered psychologist” insert—
 

““protected Scottish civil partnership” means a civil partnership registered in Scotland,  
 “protected Scottish marriage” means a marriage solemnised in Scotland,” and
  - (d) after subsection (1) insert—
 

“(2) A civil partnership which was registered outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 of the Civil Partnership Act 2004 is to be treated for the purposes of this Act as having been registered in Scotland if—

    - (a) the parties to the civil partnership elected Scotland as the relevant part of the United Kingdom under the Order, and
    - (b) details of the civil partnership have been sent to the Registrar General for Scotland.

(3) A marriage which was registered outside the United Kingdom under the Foreign Marriage Act 1892 (other than a marriage registered by virtue of section 18 of that Act) is to be treated for the purposes of this Act as having been solemnised in Scotland if details of the marriage have been sent to the Registrar General for Scotland.

(4) A marriage which was solemnised outside the United Kingdom and registered under an Order in Council made under the Registration of Births, Deaths and Marriages (Special Provisions) Act 1957 is to be treated for the purposes of this Act as having been solemnised in Scotland if details of the marriage have been sent to the Registrar General for Scotland.

(5) A consular marriage in relation to which the relevant part of the United Kingdom is Scotland is to be treated for the purposes of this Act as having been solemnised in Scotland.



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(6) In subsection (5)—

“consular marriage” means a marriage solemnised in accordance with Part 1 of Schedule 6 to the Marriage (Same Sex Couples) Act 2013 and any Order in Council made under it,

“relevant part of the United Kingdom”, in relation to such a marriage, means the part of the United Kingdom determined in accordance with paragraph 1(2)(b) of that Part of that Schedule for the purposes of the marriage.”.

### *Evidence*

3 In section 3 (evidence), before subsection (7) insert—

“(6D) If the applicant is a party to a protected Scottish marriage, an application under section 1(1) must also include—

(a) a statutory declaration by the applicant that the applicant wishes the marriage to continue after the issue of a full gender recognition certificate (if that is the case), and

(b) either—

(i) a statutory declaration by the applicant’s spouse that the spouse consents to the marriage continuing after the issue of a full gender recognition certificate (“a statutory declaration of consent”) (if the spouse has made such a declaration), or

(ii) a statutory declaration by the applicant that no such declaration by the applicant’s spouse is included.

(6E) If an application includes a statutory declaration of consent by the applicant’s spouse under subsection (6D)(b)(i), the Gender Recognition Panel must give the spouse notice that the application has been made.

(6F) If the applicant is a party to a protected Scottish civil partnership, an application under section 1(1) must also include a statutory declaration as to where the civil partnership was registered and, if the civil partnership was registered outside the United Kingdom, that details of the civil partnership have been sent to the Registrar General for Scotland.”.

### *Successful applications*

4 In section 4 (successful applications)—

(a) after subsection (1) insert—

“(1A) The certificate is to be a full gender recognition certificate if the applicant is neither married nor in a civil partnership.”,

(b) in subsection (2) (substituted by paragraph 3 of schedule 5 to the Marriage (Same Sex Couples) Act 2013)—

(i) after first “is” insert “also”,

(ii) paragraph (a) is repealed,

(c) in subsection (3) (as so substituted)—

(i) in paragraph (b), at the beginning insert “subject to subsection (3C) (a),” and

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- (ii) in paragraph (e), at the beginning insert “subject to subsection (3C)(b),” and
- (d) after subsection (3B) (as so substituted) insert—
  - “(3C) The certificate is also to be a full gender recognition certificate if—
    - (a) the applicant is a party to a protected Scottish marriage and both parties to the marriage consent to the marriage continuing after the issue of a full gender recognition certificate, or
    - (b) the applicant is a party to a protected Scottish civil partnership and the Gender Recognition Panel has decided to issue a full gender recognition certificate to the other party to the civil partnership.
  - (3D) The certificate is to be an interim gender recognition certificate if—
    - (a) the applicant is a party to a protected Scottish marriage and either party to the marriage does not consent to the marriage continuing after the issue of a full gender recognition certificate,
    - (b) subject to subsection (2)(b), the applicant is a party to a marriage which is not a protected Scottish marriage,
    - (c) the applicant is a party to a protected Scottish civil partnership and the other party to the civil partnership has not made an application under section 1(1),
    - (d) the applicant is a party to a protected Scottish civil partnership and the Gender Recognition Panel has decided not to issue a full gender recognition certificate to the other party to the civil partnership, or
    - (e) subject to subsection (2)(c), the applicant is a party to a civil partnership which is not a protected Scottish civil partnership.
  - (3E) If a Gender Recognition Panel issues a full gender recognition certificate under this section to an applicant who is a party to a protected Scottish marriage, the Panel must give the applicant’s spouse notice of the issue of the certificate.
  - (3F) Subsection (3C)(b) is subject to section 5C.”.

*Issue of full gender recognition certificate after interim certificate: applicant married*

5 Before section 5 insert—

**“4C Married person with interim certificate: issue of full certificate (Scotland)**

- (1) A Gender Recognition Panel must issue a full gender recognition certificate to a person in either of the following cases.
- (2) Case A is where, on an application by the person, the Panel is satisfied that—
  - (a) an interim gender recognition certificate has been issued to the person,

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- (b) the person was a party to a protected Scottish marriage at the time when the interim gender recognition certificate was issued,
  - (c) the person is still a party to that protected Scottish marriage, and
  - (d) both parties to the marriage now consent to the marriage continuing after the issue of the full gender recognition certificate.
- (3) Case B is where, on an application by the person, the Panel is satisfied that—
  - (a) an interim gender recognition certificate has been issued to the person,
  - (b) the person was a party to a protected Scottish civil partnership at the time when the interim gender recognition certificate was issued,
  - (c) the protected civil partnership was a qualifying civil partnership (within the meaning of section 5(6) of the Marriage (Scotland) Act 1977) and the parties to the civil partnership submitted notice of intention to marry under section 3(1) of that Act within the period of six months beginning with the day on which that certificate was issued,
  - (d) the submitting of notice has resulted in the civil partnership becoming a marriage,
  - (e) the person is a party to that marriage, and
  - (f) the person's spouse consents to the marriage continuing after the issue of the full gender recognition certificate.
- (4) If, on an application under subsection (2) or (3), the Panel is not satisfied as mentioned in that subsection, the Panel must reject the application.
- (5) An application under subsection (2) must be made within the period of six months beginning with the day on which the interim gender recognition certificate is issued.
- (6) An application under subsection (3) must be made within the period of six months beginning with the day on which the civil partnership becomes a marriage.
- (7) An application under subsection (2) or (3) must include a statutory declaration of consent (within the meaning of section 3(6D)(b)(i)) made by the person's spouse.
- (8) An application under subsection (3) must also include—
  - (a) evidence of the date on which the notice referred to in subsection (3) (c) was submitted, and
  - (b) evidence that the civil partnership has become a marriage.
- (9) If an application is made under this section, the Panel must give the applicant's spouse—
  - (a) notice of the application, and
  - (b) if the Panel grants the application, notice of the issue of the full gender recognition certificate.

#### **4D Application under section 4C: death of spouse**

- (1) In a case where an application is made under section 4C(2) or (3) and the applicant's spouse dies before the application is determined—

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- (a) the application is to be treated as an application, made under section 5(2) in a case where a spouse has died, for a full gender recognition certificate to be issued, and
  - (b) that application is to be treated as having been made at the time when the application under section 4C was made.
- (2) The Gender Recognition Panel determining the application must specify the period within which the applicant is to produce the required evidence in support of the new application.
- (3) In this section—
- “new application” means the application under section 5(2) which the person is, by virtue of subsection (1), treated as having made,
  - “required evidence” means the evidence required by section 5(4).

**4E Married person with interim certificate: issue of full certificate on application to the sheriff (Scotland)**

- (1) A person may make a summary application to the sheriff for the issue of a full gender recognition certificate where—
- (a) an interim gender recognition certificate has been issued to the person,
  - (b) the person is a party to a protected Scottish marriage, and
  - (c) the person is not in possession of a statutory declaration by the person’s spouse that the spouse consents to the marriage continuing after the issue of a full gender recognition certificate.
- (2) The sheriff must grant an application made under subsection (1) if the sheriff is satisfied that—
- (a) the applicant was a party to a protected Scottish marriage at the time when the interim gender recognition certificate was issued,
  - (b) the applicant is still a party to that protected Scottish marriage, and
  - (c) the application was made within the period of six months beginning with the day on which the interim gender recognition certificate was issued.
- (3) If an application is made under this section, the sheriff must give the applicant’s spouse—
- (a) notice of the application, and
  - (b) if the sheriff grants the application, notice of the issue of the full gender recognition certificate.
- (4) Where the sheriff issues a full gender recognition certificate, the sheriff must send a copy to the Gender Recognition Panel.

**4F Death of civil partner or spouse: issue of full certificate (Scotland)**

- (1) A Gender Recognition Panel must issue a full gender recognition certificate to a person in either of the following cases.
- (2) Case A is where, on an application by the person, the Panel is satisfied that—

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- (a) an interim gender recognition certificate has been issued to the person,
  - (b) the person was a party to a protected Scottish civil partnership at the time when the interim gender recognition certificate was issued,
  - (c) the protected civil partnership was a qualifying civil partnership (within the meaning of section 5(6) of the Marriage (Scotland) Act 1977) and the parties to the civil partnership submitted notice of intention to marry under section 3(1) of that Act within the period of six months beginning with the day on which that certificate was issued, and
  - (d) the person's civil partner died—
    - (i) before the submitting of notice had resulted in the civil partnership becoming a marriage, and
    - (ii) after the period of six months beginning with the day on which the interim gender recognition certificate was issued.
- (3) Case B is where, on an application by the person, the Panel is satisfied that—
- (a) an interim gender recognition certificate has been issued to the person,
  - (b) the person was a party to a protected Scottish civil partnership at the time when the interim gender recognition certificate was issued,
  - (c) the protected civil partnership was a qualifying civil partnership (within the meaning of section 5(6) of the Marriage (Scotland) Act 1977) and the parties to the civil partnership submitted notice of intention to marry under section 3(1) of that Act within the period of six months beginning with the day on which that certificate was issued,
  - (d) the submitting of notice resulted in the civil partnership becoming a marriage, and
  - (e) the person's spouse died—
    - (i) within the period of six months beginning with the day on which the civil partnership became a marriage, and
    - (ii) after the period of six months beginning with the day on which the interim gender recognition certificate was issued.
- (4) If, on an application under subsection (2) or (3), the Panel is not satisfied—
- (a) as mentioned in that subsection, or
  - (b) that the person is neither married nor a civil partner,
- the Panel must reject the application.
- (5) An application under subsection (2) or (3) must be made within the period of six months beginning with the day on which the death occurs.
- (6) An application under subsection (2) or (3) must include evidence of—
- (a) the death of the person's civil partner or, as the case may be, spouse and the date on which it occurred,
  - (b) the date on which the notice under section 3(1) of the 1977 Act was submitted.”.

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*Issue of full gender recognition certificate after interim certificate: grounds of divorce*

6 In section 5 (issue of full certificates where applicant has been married), after subsection (1), insert—

“(1A) Subsection (1) does not apply where a full gender recognition certificate has already been issued, to the party to whom the interim gender recognition certificate was issued, by the sheriff under section 4E.”.

*Applications by both civil partners*

7 Before section 6 insert—

**“5C Protected Scottish civil partnership: applications by both civil partners**

- (1) This section applies where a Gender Recognition Panel decides to issue a full gender recognition certificate to a party to a protected Scottish civil partnership.
- (2) The Panel must not issue the full gender recognition certificate to that person unless the Panel issues a full gender recognition certificate to the other party to the protected Scottish civil partnership.
- (3) In such a case, the Panel must issue both certificates on the same day.
- (4) Those certificates take effect at the beginning of the day on which they are issued.

**5D Protected Scottish civil partnership: power to make further provision for issue of full certificate**

- (1) The Scottish Ministers may by order provide for the issue by a Gender Recognition Panel, on an application under section 1(1) by a qualifying person, of a full gender recognition certificate in additional circumstances to those specified in section 4(3C)(b) or 5C.
- (2) In subsection (1), “qualifying person” means a person who is a party to a protected Scottish civil partnership.
- (3) An order under subsection (1) may include, in particular, provision about—
  - (a) the evidence or other information that is to be included with an application,
  - (b) the procedure to be followed in determining an application, including provision for the giving of notice to any person,
  - (c) the effect of the issuing to the applicant of a full gender recognition certificate in relation to the civil partnership to which the applicant is party.
- (4) Provision under subsection (3)(c) may include, in particular, provision for changing the civil partnership into a marriage.
- (5) An order under subsection (1) may modify this Act or any other enactment.

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- (6) Before making an order under subsection (1), the Scottish Ministers must consult the following persons on a copy of the proposed draft order—
- (a) the Registrar General for Scotland,
  - (b) the Gender Recognition Panel, and
  - (c) such other persons as the Scottish Ministers consider appropriate.”.

#### *Appeals etc.*

- 8 In section 8 (appeals etc.)—
- (a) in subsection (1), before “5(2)” insert “4C, 4F,”,
  - (b) in subsection (5), before “5(2)” insert “4C, 4E, 4F,”,
  - (c) before subsection (6) insert—

“(5B) If an application under section 1(1), 4C, 4E, 4F, 5(2), 5A(2) or 6(1) is granted, the applicant’s spouse or civil partner may apply to the Court of Session to quash the decision to grant the application on the grounds that its grant was secured by fraud.”, and
  - (d) in subsection (6), before “the” in the first place where it appears insert “or an application under subsection (5B)”.

#### *Registration*

- 9 (1) In section 10 (registration), before subsection (2) insert—
- “(1B) Where a full gender recognition certificate is issued by a Gender Recognition Panel or the sheriff to a person who is a party to a protected Scottish marriage or a protected Scottish civil partnership, the Panel must send a copy of the certificate to the Registrar General for Scotland.”.
- (2) In schedule 3 (registration), in Part 2 (Scotland)—
- (a) in paragraph 19(1), before “5(2)” insert “4C, 4E, 4F,”, and
  - (b) after paragraph 20 insert—

“20A (1) The Registrar General may, with the approval of the Scottish Ministers, make regulations about—

    - (a) the registration of qualifying Scottish marriages, and
    - (b) the registration of qualifying Scottish civil partnerships.

(2) Regulations under sub-paragraph (1) may in particular make provision for fees to be payable in respect of things done under the regulations.

(3) Regulations under sub-paragraph (1) may make different provision for different cases or circumstances.

(4) In this paragraph—

“qualifying Scottish civil partnership” means a civil partnership registered in Scotland in a case where a full gender recognition certificate has been issued to each of the civil partners,

“qualifying Scottish marriage” means a marriage solemnised in Scotland in a case where a full gender

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recognition certificate has been issued to one, or each, of the spouses.”.

*Continuity of marriage*

10 Before section 12 insert—

**“11C Continuity of marriage: Scotland**

- (1) This section applies in relation to a protected Scottish marriage if (by virtue of section 4(3C)(a), 4C or 4E) a full gender recognition certificate is issued to a party to the marriage.
- (2) The continuity of the protected Scottish marriage is not affected by the issuing of a full gender recognition certificate.”.

*Continuity of civil partnership*

11 After section 11C (inserted by paragraph 10) insert—

**“11D Continuity of civil partnership: Scotland**

The continuity of a protected Scottish civil partnership is not affected by the issuing of full gender recognition certificates (by virtue of section 4(3C)(b)) to both civil partners.”.

*Foreign gender change and marriage*

12 In section 21 (foreign gender change and marriage), subsections (2) to (5) are repealed.

**PART 2**

**ALTERNATIVE GROUNDS FOR GRANTING APPLICATIONS  
FOR GENDER RECOGNITION CERTIFICATES**

*Introductory*

13 The Gender Recognition Act 2004 is further amended in accordance with this Part of this schedule.

*Alternative grounds for granting applications*

14 In section 2 (determination of applications), after subsection (3A) insert—

“(3B) This section does not apply to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3C.”.

15 After section 3B insert—



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### “3C Alternative grounds for granting applications: Scotland

- (1) This section applies to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with this section.
- (2) The Panel must grant the application if satisfied that the applicant complies with the requirements imposed by and under section 3D and meets the conditions in subsections (3) to (6).
- (3) The first condition is that the applicant was a party to a protected Scottish marriage or a protected Scottish civil partnership on or before the date the application was made.
- (4) The second condition is that the applicant—
  - (a) was living in the acquired gender six years before the commencement of section 29 of the Marriage and Civil Partnership (Scotland) Act 2014,
  - (b) continued to live in the acquired gender until the date the application was made, and
  - (c) intends to continue to live in the acquired gender until death.
- (5) The third condition is that the applicant—
  - (a) has or has had gender dysphoria, or
  - (b) has undergone—
    - (i) surgical treatment, or
    - (ii) such other treatment as the Scottish Ministers may by order prescribe,for the purpose of modifying sexual characteristics.
- (6) The fourth condition is that the applicant is ordinarily resident in Scotland.
- (7) Before making an order under subsection (5)(b)(ii) the Scottish Ministers must consult the following persons on a copy of the proposed draft order—
  - (a) the Gender Recognition Panel,
  - (b) such other persons as the Scottish Ministers consider appropriate.
- (8) An order under subsection (5)(b)(ii)—
  - (a) may make different provision for different cases or circumstances,
  - (b) may amend any enactment (including this Act).
- (9) The Panel must reject the application if not required by subsection (2) to grant it.”.

#### *Evidence for granting applications on alternative grounds*

16 In section 3 (evidence), after subsection (9) insert—

“(10) This section does not apply to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3C.”.

17 After section 3C (inserted by paragraph 15) insert—

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**“3D Evidence for granting applications on alternative grounds: Scotland**

- (1) This section applies to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3C.
- (2) The application must include either—
  - (a) a report made by a registered medical practitioner, or
  - (b) a report made by a registered psychologist practising in the field of gender dysphoria.
- (3) If the application is based on the applicant having or having had gender dysphoria—
  - (a) the reference in subsection (2) to a registered medical practitioner is to one practising in the field of gender dysphoria, and
  - (b) that subsection is not complied with unless the report includes details of the diagnosis of the applicant’s gender dysphoria.
- (4) Subsection (2) is not complied with in a case where—
  - (a) the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics, or
  - (b) treatment for that purpose has been prescribed or planned for the applicant,unless the report required by that subsection includes details of it.
- (5) The application must also include a statutory declaration by the applicant that the applicant meets the conditions in section 3C(3) and (4).
- (6) The application must include—
  - (a) a statutory declaration as to whether or not the applicant is married or a civil partner,
  - (b) any other information or evidence required by an order made by the Scottish Ministers, and
  - (c) any other information or evidence which the Panel which is to determine the application may require,and may include any other information or evidence which the applicant wishes to include.
- (7) If the applicant is married, the application must include a statutory declaration as to whether the marriage is a protected Scottish marriage.
- (8) If the applicant is married, and the marriage is a protected Scottish marriage, the application must also include—
  - (a) a statutory declaration of consent (within the meaning of section 3(6D)(b)(i)) by the applicant’s spouse (if the spouse has made such a declaration), or
  - (b) a statutory declaration by the applicant that no such declaration by the applicant’s spouse is included.
- (9) If the application includes a statutory declaration of consent by the applicant’s spouse, the Panel must give the spouse notice that the application has been made.

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- (10) If the Panel which is to determine the application requires information or evidence under subsection (6)(c) it must give reasons for doing so.”.

*Membership of Panels determining applications on alternative grounds*

- 18 In schedule 1 (Gender Recognition Panels), in paragraph 4, after sub-paragraph (3) insert—

“(4) But a Panel need not include a medical member when determining an application under section 1(1)(a) for a certificate to be granted in accordance with section 3C.”.

### **PART 3**

#### **CONSEQUENTIAL AMENDMENTS**

- 19 (1) In section 7(1) (applications: supplementary), before “5(2)” insert “4C, 4F”.
- (2) In section 22(2)(a) (prohibition on disclosure of information), before “5(2)” insert “4C, 4F”.
- (3) In section 24 (procedure for orders and regulations)—
- (a) in subsection (5), after “section” insert “3D(6)(b),” and
  - (b) after subsection (5) insert—
- “(5A) Regulations made by the Registrar General for Scotland under paragraph 20A of Schedule 3 are subject to the negative procedure.
- (5B) An order under section 3C(5)(b)(ii) or 5D(1) is subject to the affirmative procedure.”.