

POLICY NOTE

THE MARRIAGE BETWEEN CIVIL PARTNERS (PROCEDURE FOR CHANGE AND FEES) (SCOTLAND) REGULATIONS 2014

SSI 2014/xxx

The above instrument was made in exercise of the powers conferred by section 10 of the Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”) and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

Policy Objectives

The 2014 Act introduced the possibility of allowing civil partnerships registered in Scotland to change to marriage. There are two ways of doing so: through having a marriage ceremony or through an administrative route. Provision is included at section 8 of the 2014 Act to allow couples to change their civil partnership to a same sex marriage through having a marriage ceremony. These regulations set up the administrative route.

Regulation 3 – Procedure to change a civil partnership into marriage

Couples will be able to apply to any district registrar in Scotland. It does not need to be the office where the original civil partnership was registered.

In order to make an application, couples must present together in the registration district where they want their marriage to be registered and provide:

- The completed application form (sections 1 to 12);
- Their civil partnership extract (certificate); and
- Any forms of identification as requested by the district registrar.

When the district registrar is satisfied with the information and evidence produced and the fee has been paid (if applicable), the district registrar will:

- Witness the signing of the application form by both parties to the civil partnership in the presence of each other;
- Sign the application form; and
- Enter the information from sections 1 to 10 of the application form in the marriage register.

Regulation 4 – Date of change into marriage

The civil partnership will legally change to a marriage when the district registrar signs the application form at box 14.

Regulation 5 – Fee in respect of making an application

Subject to regulation 6, there will be a £30 fee to apply to change their civil partnership to marriage (and a £10 fee for each requested marriage extract). This £30 fee is based on the current cost of one person submitting notice of intention to marry.

Regulation 6 – Applications for no fee payable

There will be no fee payable in the first year for civil partners wishing to change their civil partnership to marriage under the administrative route, provided that their civil partnership was registered before 16 December 2014 when same sex marriage was not available in Scotland.

There will be a £10 charge for each extract from the marriage register (these extracts form the marriage certificates), in line with usual practice.

Regulation 7 – Modification of the 1977 Act

There are a number of modifications to the Marriage (Scotland) Act 1977 to reflect that in the administrative route there is no ceremony and no submitting of notice of intention to marry.

Specifically, the regulations make the following modifications to the 1977 Act:

- section 5: to make provision on objections to the intended marriage, despite there being no notice of period submitted;
- Section 20A: to make provision so that a marriage is void where one or both parties to the marriage under the administrative route were incapable of understanding the nature of marriage or consenting to the marriage;
- Section 22: to allow interpreters to be present during an application to change a civil partnership to marriage through an administrative route;
- Section 23A: to ensure that the validity of a marriage through the administrative route which has been registered by the registrar is not questioned;
- Section 24: to ensure that any person who falsifies or forges the application form would be committing an offence.

Regulation 8 – Modification of the Gender Recognition Act

Regulation 8 modifies the Gender Recognition Act. In particular, it amends the 2004 Act so that 6 months' time periods relate to the administrative route for changing civil partnerships to marriage rather than the ceremonial route.

Consultation

To comply with the requirements of section 10(4) of the Marriage and Civil Partnership (Scotland) Act 2014 the Scottish Ministers have consulted with the Registrar General of Births, Deaths and Marriages for Scotland.

A short consultation on the draft regulations took place from 7 August 2014 to 29 August 2014¹.

Impact Assessments

An equality impact assessment and a Business and Regulatory Impact Assessment were completed for the Marriage and Civil Partnership (Scotland) Act 2014². In addition, Accompanying Documents were prepared for the Bill in line with the Parliament's Standing Orders³.

Financial Effects

One of the Accompanying Documents for the Bill was the Financial Memorandum. This said at paragraph 57 that "there would be costs for couples in an existing civil partnership who wished to change their civil partnership to a same sex marriage following implementation of the Act".

As indicated above, the Government has now decided that administrative changes of civil partnerships to marriages where the couple entered into the civil partnership at a time when same sex marriage was not available should be free in the first year (with extracts from the marriage register being charged at £10 each). This reflects that many couples in a civil partnership would have chosen to enter into marriage in the first place, if that had been available for same sex couples.

There are around 5,500 civil partnerships registered in Scotland⁴. Some of these will have dissolved or one of the parties will have died. If 5,000 civil partnerships change to marriage in the first year, total costs to the public purse are around £150,000 (5,000 x £30). This cost will fall in the first place on local authorities, who will carry out the administrative ceremonies to change civil partnerships to marriages. The Government is considering what arrangements can be put in place to reimburse this cost to authorities.

Scottish Government
Justice Directorate
October 2014

¹ <http://www.scotland.gov.uk/Topics/Justice/law/17867/samesex/closed-consultations> (first consultation).

² The EQIA is at <http://www.scotland.gov.uk/Resource/0042/00426363.pdf> and the BRIA is at <http://www.scotland.gov.uk/Resource/0042/00426362.pdf>

³ The Accompanying Documents for the Bill are at <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/64983.aspx>

⁴ See <http://www.gro-scotland.gov.uk/files2/stats/time-series/marriages-and-cp-aug-2013/mt-3-civil-partnerships-by-sex-and-council-2005-to-current-year.xls>