

2016 No. 66

GENDER RECOGNITION

MARRIAGE

CIVIL PARTNERSHIP

**The Gender Recognition (Marriage and Civil Partnership
Registration) (Scotland) Regulations 2016**

Made - - - - - *2nd February 2016*

Laid before the Scottish Parliament *4th February 2016*

Coming into force - - - *24th March 2016*

The Registrar General makes the following Regulations in exercise of the powers conferred by paragraph 20A(1) and (3) of Schedule 3 to the Gender Recognition Act 2004^(a) and all other powers enabling him to do so.

In accordance with paragraph 20A(1) of Schedule 3 to that Act the Scottish Ministers have approved the making of these Regulations.

Citation and commencement

1. These Regulations may be cited as the Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Regulations 2016 and come into force on 24th March 2016.

Interpretation

2. In these Regulations—

“the 1965 Act” means the Registration of Births, Deaths and Marriages (Scotland) Act 1965^(b);

“the 1977 Act” means the Marriage (Scotland) Act 1977^(c);

“the 2004 Act” means the Gender Recognition Act 2004;

“authorised registrar” means a person appointed under section 17 of the 1977 Act;

“civil partnership register” means the register established under section 95 of the Civil Partnership Act 2004^(d);

^(a) 2004 c.7 (“the 2004 Act”); paragraph 20A of Schedule 3 was inserted by the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5) (“the 2014 Act”), schedule 2, paragraph 9(2)(b).

^(b) 1965 c.49.

^(c) 1977 c.15.

^(d) 2004 c.33.

“district registrar” has the same meaning as in section 7(1) and (12) of the 1965 Act(a);

“existing civil partnership register entry” in relation to one or both civil partners to a qualifying Scottish civil partnership, means, as applicable—

(a) an entry of which a certified, or other copy is kept by the Registrar General;

(b) an entry in the civil partnership register;

containing a record of the civil partnership, but does not include a new civil partnership register entry made under these Regulations;

“existing register of marriages entry” in relation to one or both parties to a qualifying Scottish marriage, means, as applicable—

(a) an entry of which a certified, or other copy is kept by the Registrar General; or

(b) an entry in the register of marriages(b);

containing a record of the marriage, but does not include a new register of marriages entry made under these Regulations;

“full gender recognition certificate” has the same meaning as in section 25(1) of the 2004 Act(c);

“new civil partnership register entry” in relation to one or both civil partners to a qualifying Scottish civil partnership means an entry in the civil partnership register containing a record of the civil partnership, made under these Regulations;

“new register of marriages entry” in relation to one or both parties to a qualifying Scottish marriage, means an entry in the register of marriages, containing a record of the marriage, made under these Regulations;

“qualifying Scottish civil partnership” has the same meaning as in paragraph 20A(4) of Schedule 3 to the 2004 Act(d);

“qualifying Scottish marriage” has the same meaning as in paragraph 20A(4) of Schedule 3 to the 2004 Act(e);

“register of marriages” means the register of marriages provided by the Registrar General under section 32(1) of the 1965 Act(f);

“registration district” has the same meaning as in section 5 of the 1965 Act(g); and

“the Registrar General” means the Registrar General of Births, Deaths and Marriages for Scotland.

Application for registration of qualifying Scottish marriages

3.—(1) Where the parties to a qualifying Scottish marriage wish to register the marriage they must—

- (a) make an application by completing the form set out in Schedule 1 to these Regulations; and
- (b) send, or submit in person, the form to the Registrar General.

(a) Section 7(1) was amended by the Local Electoral Administration and Registration Services (Scotland) Act 2006 (asp 14) (“the 2006 Act”), section 37(4).

(b) Register of marriages means the register of marriages kept by the district registrar.

(c) Section 25 was amended by the 2014 Act, schedule 2, paragraph 2.

(d) Paragraph 20A(4) of Schedule 3 to the 2004 Act was inserted by the 2014 Act, schedule 2, paragraph 9(2). By virtue of section 25(2) of the 2004 Act certain civil partnerships registered outside the United Kingdom are treated for the purposes of the 2004 Act as registered in Scotland.

(e) By virtue of section 25(3) to (5) of the 2004 Act certain marriages solemnised outside the United Kingdom are treated as solemnised in Scotland for the purposes of the 2004 Act.

(f) Section 32(1) was amended by the Marriage (Scotland) Act 1977 (“the 1977 Act”), Schedule 2, paragraph 8.

(g) Section 5 was relevantly amended by the 2006 Act, section 37(2).

(2) Where an application is made under paragraph (1), the Registrar General, where satisfied with the information in the application form, must—

- (a) make a draft new register of marriages entry containing the particulars referred to in regulation 4; and
- (b) send the draft new register of marriages entry to the district registrar.

Particulars to be entered in the draft new register of marriages entry

4.—(1) Except as provided in this regulation and regulations 5 and 6, the particulars to be entered in the draft new register of marriages entry are to be the same particulars as are entered in the existing register of marriages entry.

(2) The draft new register of marriages entry must reflect the name and gender referred to on the full gender recognition certificate, or certificates, granted to one or each of the parties to the marriage.

(3) Where any of the particulars would indicate that a marriage of persons of the same sex was solemnised before 16th December 2014, the Registrar General must not enter those particulars in the draft new register of marriages entry, unless the parties request those particulars to be entered.

(4) If by virtue of the prohibition in paragraph (3), the Registrar General is unable to enter the date on which the marriage was solemnised—

- (a) the marriage is to be entered in the draft new register of marriages entry as if it had been solemnised on the date on which the draft new register of marriages entry is made; and
- (b) the particulars to be entered in the draft new register of marriages entry must be those applicable on that date, except that—
 - (i) the witnesses with addresses particular must remain blank**(a)**; and
 - (ii) where the marriage was solemnised by an authorised registrar, the marriage is to be entered in the draft new register of marriages entry as if it had been solemnised by an authorised registrar, in post on the date referred to in paragraph 4(a), at the registration office of the registration district entered in the existing register of marriage entry.

Qualifying Scottish marriages that are religious or belief marriages

5.—(1) The Registrar General must not enter in the draft new register of marriages entry any particulars that would indicate that a marriage of persons of the same sex was a religious or belief marriage, if on the applicable date, the person who solemnised the marriage was not—

- (a) a person who may solemnise a marriage between persons of the same sex under section 8(1B)(a)(i) of the 1977 Act**(b)**;
- (b) registered under section 9 of the 1977 Act**(c)** to solemnise marriage between persons of the same sex; or
- (c) temporarily authorised under section 12 of the 1977 Act**(d)** to solemnise marriage between persons of the same sex.

(a) The witnesses with addresses particular is at box 13 of the Marriage form, prescribed by the Registration of Births, Still-Births, Deaths and Marriages (Prescription of Forms) (Scotland) Regulations (S.I. 1997/2348), regulation 19 and Schedule 17.

(b) Section 8(1B)(a)(i) was inserted by the 2014 Act, section 12(2)(b).

(c) Section 9 was relevantly amended by the 2014 Act, section 13(2).

(d) Section 12 was relevantly amended by the 2006 Act, section 50(8) and section 14(2) of the 2014 Act.

(2) Where paragraph (1) applies, the marriage is to be entered in the draft new register of marriages entry as if it had been solemnised by an authorised registrar in post on the applicable date at the registration office of the registration district entered in the existing register of marriage entry.

(3) In this regulation—

“religious or belief marriage” has the same meaning as in section 8(2) of the 1977 Act^(a); and

“applicable date” means the date entered by the Registrar General in the draft new register of marriages entry as the date the marriage was solemnised.

Qualifying Scottish marriages solemnised outside the United Kingdom

6.—(1) Unless paragraph (2) applies, the Registrar General must not enter in the draft new register of marriages entry any particulars that would indicate that a marriage between persons of the same sex, or between persons of different sexes (as the case may be) was solemnised outside the United Kingdom according to the law of Scotland.

(2) Paragraph (1) does not apply if—

(a) the qualifying Scottish marriage is between persons of different sexes which was registered outside the United Kingdom under section 22 of the Foreign Marriage Act 1892^(b);

(b) the qualifying Scottish marriage is a forced marriage within the meaning of paragraph 12(2) of Schedule 6 to the Marriage (Same Sex Couples) Act 2013^(c) between persons of different sexes; or

(c) on the applicable date there is a notification (which has not been subsequently revoked) from the authorities in the country or territory outside the United Kingdom, in which the marriage was solemnised, to the Secretary of State in writing, that there is no objection to marriages of persons of the same sex, or between persons of different sexes (as the case may be) taking place in that country or territory.

(3) Where paragraph (1) applies, the qualifying Scottish marriage is to be entered in the draft new register of marriages entry as if it had been solemnised by an authorised registrar in post on the applicable date in the registration office of the district of Edinburgh registration district.

(4) In this regulation “applicable date” means the date entered by the Registrar General in the draft new register of marriages entry as the date the marriage was solemnised.

Registration of qualifying Scottish marriages

7. On receipt of the draft new register of marriages entry, sent by the Registrar General under regulation 3(2)(b), the district registrar must register the qualifying Scottish marriage by causing the particulars in the draft new register of marriages entry to be entered in the register of marriages kept by him or her.

Application for registration of qualifying Scottish civil partnerships

8.—(1) Where both of the civil partners in a qualifying Scottish civil partnership wish to register their civil partnership, the civil partners must—

(a) make an application by completing the form set out in Schedule 2 to these Regulations; and

(b) send, or submit in person, the form to the Registrar General.

(a) The definition of “religious or belief marriage” was inserted by the 2014 Act, section 12(4).

(b) 1892 c.23. Section 22 was repealed by the Marriage (Same Sex Couples) Act 2013 c.30, section 13(2).

(c) 2013 c.30.

(2) Where an application is made under paragraph (1), the Registrar General, where satisfied with the information in the application form, must—

- (a) make a draft new civil partnership register entry containing the particulars referred to in regulation 9; and
- (b) send the draft new civil partnership register entry to the district registrar.

Particulars to be entered in civil partnership register entry

9.—(1) Except as provided in paragraph (2) the particulars to be entered in the draft new civil partnership register entry are to be the same particulars as are entered in the existing civil partnership register entry.

(2) The draft new civil partnership register entry must reflect the civil partners' names and gender referred to on the full gender recognition certificates granted to each of them.

Registration of qualifying Scottish civil partnerships

10. On receipt of the draft new civil partnership register entry, sent by the Registrar General under regulation 8(2)(b), the district registrar must register the qualifying Scottish civil partnership by causing the particulars in the draft new civil partnership register entry to be entered in the civil partnership register kept by him or her.

Revocation of gender recognition certificates etc.

11.—(1) This regulation applies if, after a qualifying Scottish marriage has been registered in the register of marriages or a qualifying Scottish civil partnership has been registered in the civil partnership register (whichever is applicable) in accordance with these Regulations, in relation to a person, a court makes an order under section 8(6) of the 2004 Act^(a) revoking the full gender recognition certificate in relation to that person.

(2) Subject to any appeal, the Registrar General must, on being informed by virtue of paragraph 19(2) of Schedule 3 to the 2004 Act, of an order made under section 8(6) of the 2004 Act—

- (a) cancel the new register of marriages entry or new civil partnership register entry (whichever is applicable) relating to the person; and
- (b) cancel any marking of an entry relating to the person made by virtue of article 3(5) or 4(3) (whichever is applicable) of the Gender Recognition (Marriage and Civil Partnership Registration) (Modification) (Scotland) Order 2016^(b).

^(a) Section 8(6) was amended by the Marriage (Same Sex Couples) Act 2013 (c.30), Schedule 5, paragraph 8.

^(b) S.S.I. 2016/67.

Continuity of qualifying Scottish marriages

12. For the avoidance of doubt nothing in these Regulations affects the continuity of a qualifying Scottish marriage^(a).

New Register House,
Edinburgh
2nd February 2016

ROD BURNS
Deputy Registrar General

Approved by the Scottish Ministers

St Andrew's House,
Edinburgh
2nd February 2016

MARCO BIAGI
Authorised to sign by the Scottish Ministers

(a) Section 11C of the 2004 Act provides that the continuity of a protected Scottish marriage is not affected by the issue of a full gender recognition certificate. "Protected Scottish marriage" is defined at section 25(1) of the 2004 Act as a marriage solemnised in Scotland.

SCHEDULE 1

Regulation 3

APPLICATION FORM TO REGISTER A MARRIAGE FOLLOWING
ISSUE OF FULL GENDER RECOGNITION CERTIFICATE

Please read the attached guidance note before completing this form.

	<i>Applicant 1</i>	<i>Applicant 2</i>
1. If you married before 16th December 2014 and only one of you has obtained a full gender recognition certificate, do you wish the Register of marriages to show the original date of your marriage?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
2. Forename(s)*		
Surname(s)*		
Surname(s) when existing marriage was registered		
3. Date of existing marriage registration		
4. Place of existing marriage registration		
5. Occupation*		
6. Country of birth*		
7. Usual residence*		
8. Father's/Parents forename(s), surname(s), occupation or whether retired, and whether living*		
9. Mother's/Parents forename(s), surname(s), occupation or whether retired, and whether living*		
10. Preferred designation (please tick)	Bride <input type="checkbox"/> Bridegroom <input type="checkbox"/> No designation <input type="checkbox"/>	Bride <input type="checkbox"/> Bridegroom <input type="checkbox"/> No designation <input type="checkbox"/>

11. Contact telephone number		
12. Email address		
13.		
<i>(Signed by applicant)</i>		<i>(Signed by applicant)</i>
<i>(Date)</i>		<i>(Date)</i>

*at the time of this application. You only need to provide these details if you entered into marriage before 16th December 2014; only one of you has obtained a full gender recognition certificate; and you do not wish the register to show the original date of the marriage.

SCHEDULE 2

Regulation 8

APPLICATION FORM TO REGISTER A CIVIL PARTNERSHIP
FOLLOWING ISSUE OF FULL GENDER RECOGNITION
CERTIFICATE

Please read the attached guidance note before completing this form.

	<i>Applicant 1</i>	<i>Applicant 2</i>
1. Surname(s) when existing civil partnership was registered		
2. Date of existing civil partnership registration		
3. Place of existing civil partnership registration		
4. Contact telephone number		
5. Email address		
6.		
<i>(Signed by applicant)</i>	<i>(Signed by applicant)</i>	
<i>(Date)</i>	<i>(Date)</i>	

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the registration of marriages and civil partnerships in which one or both parties have obtained a full gender recognition certificate under the Gender Recognition Act 2004 (c.7). Changes made to the Gender Recognition Act 2004 by the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5) enable couples to remain married when one or each of the parties obtains a full gender recognition certificate, and to remain in a civil partnership when both parties obtain a full gender recognition certificate.

Regulation 3 provides for where one or both parties to a marriage are in receipt of a full gender recognition certificate under section 4(1) of the 2004 Act and wish to register their marriage to reflect the acquired gender. The parties must make an application to the Registrar General. If the Registrar General is satisfied with information contained in the application form he must prepare a draft of the register entry and send this to the district registrar for the registration district where the marriage was solemnised.

Regulation 4 provides that except in certain circumstances, the particulars to be entered are the same particulars as were recorded in the parties' existing entry, amended to reflect the name and gender of the party or parties to whom a full gender recognition certificate has been granted. Regulation 4(3) provides that if any of the particulars would indicate that a marriage of a same sex couple was solemnised before it would have been possible for such a marriage to be solemnised then the original particulars are not to be entered unless the couple request this.

Where the couple do not wish the original particulars to be entered, the marriage will be entered as if it had solemnised on the date that the new entry is made up, the details of the witnesses will be removed and the details of the registrar may be amended if the registrar that solemnised the marriage is no longer in post.

Regulation 5 prohibits the Registrar General from recording any particulars in the register that would indicate that a marriage was a religious or belief marriage solemnised by an authorised celebrant where on the date to be recorded as the date of the marriage that celebrant could not have solemnised the marriage. Such marriages are to be treated as having been solemnised by a registrar in a registration office.

Regulation 6 deals with marriages solemnised outside the United Kingdom according to the law of Scotland, these are marriages solemnised by UK consuls and through the UK armed forces.

Regulation 7 requires the district registrar to register the marriage by entering the particulars on the draft entry that has been sent by the Registrar General.

Regulations 8 to 10 make provision in relation to civil partnerships for a new civil partnership entry that will contain the same particulars as are entered in the original civil partnership entry amended to reflect the name and gender of the parties.

Regulation 11 allows the Registrar General to cancel an entry in relation to a person made in accordance with these Regulations if his or her full gender recognition certificate is revoked.

Regulation 12 makes clear for the avoidance of doubt that registration of a qualifying Scottish marriage under these Regulations has no effect on the continuity of that marriage.

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