

POLICY NOTE

THE MARRIAGE BETWEEN CIVIL PARTNERS (PROCEDURE FOR CHANGE AND FEES) (SCOTLAND) AMENDMENT REGULATIONS 2023

SSI 2023/55

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 10 of the Marriage and Civil Partnership (Scotland) Act 2014 and all other powers enabling them to do so.

The Scottish Ministers have, as required, consulted the Registrar General for Scotland, before making this instrument.

The instrument is subject to the negative procedure.

These Regulations amend the Marriage Between Civil Partners (Procedure for Change and Fees) (Scotland) Regulations 2014 (“the 2014 Regulations”) to make amendments to the procedure by which certain civil partnerships can become marriages other than as a result of the parties taking part in a marriage ceremony. These amendments include the replacement of the form by which a couple can apply to have their civil partnership changed into a marriage and an increase in the fee payable on making an application to change a civil partnership into a marriage under the 2014 Regulations from £30 to £45.

Policy Objectives

The Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”) made a number of changes to the law on marriage and civil partnership. In particular, the 2014 Act allows same sex couples to get married and couples in a civil partnership are enabled to change their civil partnership to a marriage either by way of a marriage ceremony or by making an application to do so.

The form of application for changing a civil partnership into a marriage that was introduced in 2014 allows each party to choose how they wish to be designated in the documentation relating to the marriage. In line with other changes made at the time that took into account the introduction of same sex marriage each party is asked whether they wish to be described as “Bridegroom” or “Bride” or to have no designation.

One of the objectives of these Regulations is to allow a party to a civil partnership which is being changed to a marriage the additional choice to designate themselves as “Groom”. Regulation 2(6) replaces the existing form for this purpose. This reflects a similar change being made to the form by which a person gives notice to the district registrar of their intention to marry under separate Regulations made by the Registrar General for Scotland.

This change is intended to address a concern raised by a number of individuals since the implementation of the 2014 Act that, in a male same sex marriage, “Bridegroom” is inappropriate because there is no “Bride”.

The other designation options in a marriage of “Bridegroom” and “Bride” (there are no designations for civil partners) are retained. This reflects that when the Scottish Government carried out a short consultation on changes to registration forms following the 2014 Act, some religious bodies indicated that it is particularly important to retain the terms “Bridegroom” and “Bride” in relation to marriage.

In addition, regulation 2(3) increases the fee for an application to change a civil partnership to a marriage from £30 to £45. This is the first change of fee for an application to change a civil partnership to a marriage since the process was introduced on 16 December 2014.

This change is consistent with the fee for lodging a notice of intention to marry and for a notice of a proposed civil partnership, both of which were increased to £45 from £30 with effect from 1 May 2022 by the Registration Services (Fees, Etc) Regulations 2022 (SSI 2022/68)¹. The Scottish Government’s policy as set out in guidance in the Scottish Public Finance Manual is that charges for public services should generally allow for full cost recovery. Consequently, the aim is for each of registration services fee to recover the true cost of the statutory service to which they relate.

These Regulations make a number of further minor changes to the 2014 Regulations.

Regulation 2(2) clarifies Regulation 3 of the 2014 Regulations by providing that the date and place to be entered in the marriage register when a civil partnership is changed into a marriage are the date and place of the signing of the application form by the parties and by the district registrar. The parties will still be treated as having been married to each other since the date on which their civil partnership was registered by virtue of section 11(2)(b) of the Marriage and Civil Partnership (Scotland) Act 2014.

Regulation 2(4) revokes regulations 6 and 8 of the 2014 Regulations as these had become obsolete. Regulation 6 made provision for a fee exemption for those applications to change a civil partnership to a marriage submitted before 16 December 2015. Regulation 8 provided for how certain provisions of the Gender Recognition Act 2004, which were repealed by the Civil Partnership (Scotland) Act 2020, were to have effect in relation to persons in civil partnerships changed into marriages.

Regulation 2(5) corrects an error in regulation 7(3) of the 2014 Regulations as to the situations in which a marriage resulting from being changed from a civil partnership is treated as being void.

Consultation

The Scottish Ministers have, as required by section 10(4) of the Marriage and Civil Partnership (Scotland) Act 2014, consulted the Registrar General for Scotland before making this instrument.

In respect of the change to the form for changing a civil partnership to a marriage, the Scottish Ministers have also made these Regulations having considered feedback from individuals, while continuing to respect the outcomes of the consultation carried out at the time of the implementation of the 2014 Act.

¹ <https://www.legislation.gov.uk/ssi/2022/68/introduction/made>

National Records of Scotland also consulted the Convention of Scottish Local Authorities (CoSLA) and the Association of Registrars of Scotland (AROS) on the level of fees in advance of the Registration Services (Fees, Etc) Regulations 2022 (SSI 2022/68)².

Impact Assessments

A Business and Regulatory Impact Assessment and an Equality Impact Assessment (EQIA) and are attached. No changes to the policy objectives were required as a result.

The minimum age of marriage and civil partnership is 16 and these Regulations do not impact differently for 16 and 17 year olds. Consequently, we have not undertaken a Child Rights and Wellbeing Impact Assessment. Any impacts for children are considered in the EQIA.

The effect of the changes made by these Regulations on island communities is not different from that on other communities.

These Regulations do not impact on how personal data is handled or processed, or on the environment, nor is the policy considered to constitute a strategic decision in respect of the socio-economic inequality duty.

Financial Effects

A BRIA has been completed and is attached.

The policy has no impact on business.

There will be costs for National Records of Scotland in updating information technology systems to reflect the changes made to the form for changing a civil partnership to a marriage and other forms and in updating their guidance. These costs are considered to be minimal.

The costs associated with the increase in the fees for submission of an application to change a civil partnership to a marriage will be borne by those who intend to change their civil partnership to a marriage.

While very few civil partnerships are changed to a marriage either by way of a marriage ceremony or by making use of the process provided in the 2014 Regulations, there should be a positive financial impact for local authorities whose registrars process all documentation associated with marriage and civil partnership because the fee will now better reflect the costs of providing the service. A full BRIA was also carried out in advance of and published alongside the Registration Services (Fees, Etc) Regulations 2022 (SSI 2022/68)³ in respect of the equivalent fee change for lodging a notice of intention to marry or a notice of proposed civil partnership.

**Scottish Government
Justice Directorate
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² <https://www.legislation.gov.uk/ssi/2022/68/introduction/made>

³ <https://www.legislation.gov.uk/ssi/2022/68/introduction/made>