
DRAFT STATUTORY INSTRUMENTS

2014 No.

The Marriage and Civil Partnership (Scotland) Act
2014 and Civil Partnership Act 2004 (Consequential
Provisions and Modifications) Order 2014

PART 1

INTRODUCTION

Citation and commencement

1.—(1) This Order may be cited as the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014.

(2) This Order comes into force on 16th December 2014.

Interpretation

2. In this Order—

“the 1977 Act” means the Marriage (Scotland) Act 1977(1);

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992(2);

“the 2004 Act” means the Gender Recognition Act 2004(3);

“the 2006 Act” means the Armed Forces Act 2006(4);

“the 2013 Act” means the Marriage (Same Sex Couples) Act 2013(5);

“the 2014 Act” means the Marriage and Civil Partnership (Scotland) Act 2014(6).

Extent

3.—(1) Articles 1 to 3, 7, 31, paragraph 15(7) and paragraph 16 of Schedule 5 extend to England and Wales, Scotland and Northern Ireland.

(2) Articles 12 to 30, paragraph 2(7) of Schedule 4 and paragraphs 15(1), (2), (3), (4) and 19 of Schedule 5 extend to England and Wales and Scotland only.

(3) Paragraph 15(6) of Schedule 5 extends to England and Wales only.

(4) Articles 4, 5, 8 to 11, and Schedule 1, Schedule 2, Schedule 3, Schedule 4 (except as specified in paragraph (2) of this article), Schedule 5 (except as specified in paragraphs (1), (2) and (3) of this article) and Schedule 6 extend to Scotland only.

(1) 1977 c.15.
(2) 1992 c.4.
(3) 2004 c.7.
(4) 2006 c.52.
(5) 2013 c.30.
(6) 2014 asp 5.

- (5) Article 6 extends to Northern Ireland only.

PART 2

CONSEQUENTIAL PROVISIONS

Meaning of marriage and related expressions: Scotland

4. Schedule 1 (meaning of marriage and related expressions: Scotland) has effect.

Contrary provision to Schedule 1 and consequential modification of enactments etc. as a result

5.—(1) Schedule 2 (which makes provision to which paragraphs 1(1) and (2) and paragraphs 2 to 4 of Schedule 1 are subject and which disapplies those provisions in specified cases) has effect.

(2) Schedule 3 (which modifies enactments etc. in consequence of the provision made by Schedule 2 to this Order) has effect.

(3) Schedule 4 (which modifies the Social Security Pensions Act 1975 and the Social Security Contributions and Benefits Act 1992 in consequence of the provision made by Schedule 2 to this Order and makes further consequential modifications to those Acts) has effect.

PART 3

SCOTTISH SAME SEX MARRIAGE IN NORTHERN IRELAND

Treatment of Scottish same sex marriage in Northern Ireland

6.—(1) Under the law of Northern Ireland, a Scottish marriage of a same sex couple is to be treated as a civil partnership registered in Scotland (and accordingly, the spouses are to be treated as civil partners).

(2) In this Part “Scottish marriage” means—

- (a) a marriage which was solemnised in Scotland in accordance with the 1977 Act;
- (b) a marriage which was changed from a civil partnership in accordance with provision made under section 10 of the 2014 Act;
- (c) a marriage which was solemnised in accordance with Part 1 or 3 of Schedule 6 to the 2013 Act in relation to which the relevant part of the United Kingdom is Scotland;
- (d) a marriage which was changed from a civil partnership in accordance with Part 5 of this Order.

Recognition of a dissolution of a deemed civil partnership

7.—(1) If—

- (a) a final order is made in relation to the deemed civil partnership; and
- (b) the validity of that order is recognised throughout the United Kingdom,

that order has, throughout the United Kingdom, the same effect in relation to the Scottish marriage that it has in relation to the deemed civil partnership.

(2) If—

(a) a separation order is made in relation to the relevant couple as parties to the deemed civil partnership; and

(b) the validity of that order is recognised throughout the United Kingdom,

that order has, throughout the United Kingdom, the same effect in relation to the couple as parties to the Scottish marriage that it has in relation to them as parties to the deemed civil partnership (and has effect in relation to any other persons accordingly).

(3) In this article—

“deemed civil partnership” means the civil partnership which the actual marriage is treated as being by virtue of article 6;

“final order” means—

(a) the dissolution or annulment of a civil partnership obtained from a court of civil jurisdiction in Northern Ireland;

(b) an overseas dissolution or annulment;

“relevant couple” means the same sex couple who are parties to the actual marriage; and

“separation order” means—

(a) a legal separation of the parties to a civil partnership obtained from a court of civil jurisdiction in Northern Ireland;

(b) an overseas legal separation of the parties to a civil partnership.

PART 4

STATE PENSIONS

Category B retirement pension for married person

8.—(1) Section 48A of the 1992 Act(7) (Category B retirement pension for married person) does not confer a right to a Category B retirement pension on a person by reason of the person being married to a person of the same sex who was born before 6th April 1950.

(2) But that does not prevent section 48A from conferring a right to such a pension on a woman by reason of her marriage to another woman (“the spouse”) if—

(a) the spouse is a woman by virtue of a full gender recognition certificate having been issued under the 2004 Act; and

(b) the marriage subsisted before the time when that certificate was issued.

Category B retirement pension for widows and widowers

9.—(1) Section 48B of the 1992 Act(8) (Category B retirement pension for widows and widowers) does not confer a right to a Category B retirement pension on a woman who attained pensionable age before 6th April 2010 by reason of her marriage to another woman.

(2) But that does not prevent section 48B from conferring a right to such a pension on a woman by reason of her marriage to another woman (“the spouse”) if—

(7) Section 48A was inserted by the Pensions Act 1995 (c.26) (“the 1995 Act”), Schedule 4, paragraph 3(1) and was amended by the Civil Partnership Act 2004 (c.33), Schedule 24(3), paragraph 25; the Pensions Act 2007 (c.22) (“the 2007 Act”), Schedule 1(1), paragraph 2(3) and Schedule 2(3), paragraph 7; and the 2013 Act, Schedule 4(5), paragraph 11.

(8) Section 48B was inserted by the 1995 Act, Schedule 4, paragraph 3(1); and was amended by Civil Partnership Act 2004, Schedule 24(3), paragraph 26; the 2007 Act, Schedule 1(1), paragraph 3 and Schedule 2(3), paragraph 8; and the 2013 Act, Schedule 4(5), paragraph 12.

- (a) the spouse was, at the time of her death, a woman by virtue of a full gender recognition certificate having been issued under the 2004 Act; and
- (b) the marriage subsisted before the time when that certificate was issued.

Category B retirement pension for widowers

10.—(1) Section 51(1ZA) of the 1992 Act⁽⁹⁾ (category B retirement pension for widowers) does not confer a right to a Category B retirement pension on a person if the person attains pensionable age on or after 6th April 2010.

(2) Section 51(1ZA) of the 1992 Act does not confer a right to a Category B retirement pension on a woman by reason of her marriage to another woman (“the spouse”) if—

- (a) the spouse was, at the time of her death, a woman by virtue of a full gender recognition certificate having been issued under the 2004 Act; and
- (b) the marriage subsisted before the time when that certificate was issued.

Adult dependency increases

11.—(1) In a case where a full gender recognition certificate is issued to a person under the 2004 Act—

- (a) section 83 of the 1992 Act⁽¹⁰⁾ (pension increase (wife)) does not cease to apply by virtue of the change of gender; and
- (b) in the continued application of section 83 in such a case, references to a pension payable to a man, or references to his wife, are to be construed accordingly.

(2) In a case where a full gender recognition certificate is issued to a person under the 2004 Act—

- (a) section 84 of the 1992 Act⁽¹¹⁾ (pension increase (husband)) does not cease to apply by virtue of the change of gender; and
- (b) in the continued application of section 84 in such a case, references to a pension payable to a woman, or references to her husband, are to be construed accordingly.

Converted or changed civil partnerships

12.—(1) This article applies where a civil partnership is converted into a marriage under section 9 of the 2013 Act, or is changed into a marriage in accordance with provision made under the 1977 Act, section 10 of the 2014 Act or Part 5 of this Order.

(2) For the purposes of section 48A of, and paragraph 5A(1)(b) of Schedule 3⁽¹²⁾ to, the 1992 Act—

- (a) the civil partnership is to be treated as having subsisted during the period that begins with the day when it was formed and ends with the day before the conversion day; and
- (b) the marriage is to be treated as subsisting only from the conversion day.

(3) In this article “conversion day” means the day when the civil partnership is converted into a marriage or changed into a marriage.

⁽⁹⁾ Section 51(1ZA) was inserted by the 2013 Act, Schedule 4(5), paragraph 13.

⁽¹⁰⁾ Section 83 was repealed by the 2007 Act, Schedule 7(2), paragraph 1 but is subject to savings specified in section 4 of that Act.

⁽¹¹⁾ Section 84 was repealed by the 2007 Act, Schedule 7(2), paragraph 1 but is subject to savings specified in section 4 of that Act.

⁽¹²⁾ Paragraph 5A of Schedule 3 was inserted by the 2007 Act, section 1(3) and amended by the 2013 Act, Schedule 4(5), paragraphs 11 and 12.

PART 5
MARRIAGE OVERSEAS
CHAPTER 1
General

Protection of freedom of expression etc.: forces marriages

13.—(1) This article applies to any chaplain serving in any of Her Majesty’s forces in a country or territory outside the United Kingdom.

(2) For the avoidance of doubt, nothing in this Order so far as it makes provision as to the persons who may solemnise marriages of persons of the same sex 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.

(3) In this article—

“Convention right” has the same meaning as in the Human Rights Act 1998⁽¹³⁾; and
“Her Majesty’s forces” has the same meaning as in the 2006 Act.

No duty to opt-in etc.: overseas same sex forces marriage

14.—(1) This article applies in the case of a forces marriage of a same sex couple—

- (a) which takes place in a country or territory outside the United Kingdom;
- (b) which takes place according to religious rites and usages under article 12 of the Overseas Marriage Order; and
- (c) where Scotland is the relevant part of the United Kingdom.

(2) For the avoidance of doubt, nothing in this Order so far as it makes provision as to the person who may solemnise marriages of persons of the same sex imposes a duty—

- (a) on any relevant governing authority to give consent in respect of a marriage to which this article applies;
- (b) on any person to become an authorised person (within the meaning of paragraph 12(2)(a) of Schedule 6 to the 2013 Act and article 12 of the Overseas Marriage Order) in respect of such a marriage;
- (c) on any authorised person to solemnise such a marriage.

(3) In this article—

“forces marriage” has the same meaning as in paragraph 12(2) of Schedule 6 to the 2013 Act; and
“Overseas Marriage Order” means the Overseas Marriage (Armed Forces) Order 2014⁽¹⁴⁾.

⁽¹³⁾ 1998 c.42.
⁽¹⁴⁾ S.I. 2014/1108.

CHAPTER 2

Consular and armed forces marriage between civil partners - general

Meaning of civil partnership

15. In this Part “civil partnership” means a civil partnership which—

- (a) was registered in Scotland; or
- (b) was registered outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 of the Civil Partnership Act 2004⁽¹⁵⁾ where—
 - (i) the parties to the civil partnership elected Scotland as the relevant part of the United Kingdom under the Order; and
 - (ii) details of the civil partnership were sent to the Registrar General of Births, Deaths and Marriages for Scotland;

and has not been dissolved, annulled or ended by death.

Effect of consular or armed forces marriage between civil partners

16. Where a civil partnership is changed into a marriage under this Part, section 11 of the 2014 Act applies in relation to the marriage as if the civil partnership had been changed into a marriage in accordance with provision made under the 1977 Act or section 10(1) of the 2014 Act.

Modification of the 2004 Act

17.—(1) In their application to civil partnerships changed into marriages in accordance with this Part, the following provisions of the 2004 Act have effect subject to the following modifications.

(2) In section 4C⁽¹⁶⁾ (married person with interim certificate: issue of full certificate (Scotland))

- (a) in subsection (3)—
 - (i) paragraph (c) has effect as if for the words “and the parties” to the end were substituted by “and within the period of six months beginning with the day on which that certificate was issued a declaration was signed by a registration officer or authorised person in relation to that civil partnership in accordance with Part 2 of the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014”;
 - (ii) paragraph (d) has effect as if for the words “submitting of notice has” were substituted by “signing of the declaration”;

(b) for subsection (8) substitute—

“(8) An application under subsection (3) must also include evidence of the declaration referred to in subsection (3)(c).”

(3) For section 4F⁽¹⁷⁾ (death of civil partner or spouse: issue of full certificate (Scotland)), substitute—

⁽¹⁵⁾ 2004 c.33.

⁽¹⁶⁾ Section 4C was inserted by the 2014 Act, schedule 2, paragraph 5. It will come into force on 16th December 2014.

⁽¹⁷⁾ Section 4F was inserted by the 2014 Act, schedule 2, paragraph 5. It will come into force on 16th December 2014.

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

(1) A Gender Recognition Panel must issue a full gender recognition certificate to a person where 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);
- (d) within the period of six months beginning with the day on which the interim gender recognition certificate was issued a declaration was signed by a registration officer or authorised person in relation to that civil partnership in accordance with Part 5 of the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014; 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.

(2) If, on an application under subsection (1), 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.

(3) An application under subsection (1) must be made within the period of six months beginning with the day on which the death occurs.

(4) An application under subsection (1) must include evidence of—

- (a) the death of the person’s spouse and the date on which it occurred;
- (b) the declaration referred to in subsection (1)(d).”.

CHAPTER 3

Consular marriage between civil partners

Interpretation

18. In this Chapter—

- (a) “declaration” has the meaning given in article 21 (consular declaration);
- (b) “registration officer” has the same meaning as in paragraph 6 of Schedule 6 to the 2013 Act;
- (c) “United Kingdom national” has the same meaning as in paragraph 15 of Schedule 6 to the 2013 Act.

Countries or territories in which consular marriage between civil partners may take place

19. A registration officer may facilitate a civil partnership being changed into a marriage, where at least one of the parties is a United Kingdom national, in those countries or territories outside the United Kingdom which have notified the Secretary of State in writing that there is no objection to

such changes taking place in that country or territory and which have not subsequently revoked that notice.

Consular change of civil partnership into marriage

20.—(1) Parties to a civil partnership are to be regarded as having changed their civil partnership into a marriage when they have signed the declaration and followed the procedure set out in paragraph (1) of article 22 and the registration officer has signed the declaration in accordance with paragraph (2) of that article.

(2) No religious service is to be used during the procedure set out in that article.

Consular declaration

21. Before the parties to a civil partnership can change their civil partnership into a marriage in accordance with this Chapter each of the parties must sign a declaration containing—

- (a) the following details pertaining to each of the parties—
 - (i) forename(s);
 - (ii) surname;
 - (iii) nationality;
 - (iv) date of birth;
 - (v) sex;
 - (vi) address; and
- (b) a statement to the effect that—
 - (i) each of the parties has had, for the period of 28 days ending on the day on which the change is to be completed, their usual residence within the consular district of the registration officer;
 - (ii) the parties are in an existing civil partnership with each other;
 - (iii) each of the parties knows of no reason why the civil partnership should not be changed into a marriage.

Consular change procedure

22.—(1) The parties to a civil partnership must, in order to change their civil partnership into a marriage in accordance with this Chapter—

- (a) attend in person before the registration officer in consular premises;
- (b) provide evidence of the formation of their civil partnership with each other; and
- (c) provide such evidence as may be required by the registration officer to satisfy the registration officer of the details provided in the declaration.

(2) Once the parties to the civil partnership have signed the declaration referred to in article 20, the registration officer must, in the presence of the parties, also sign the declaration.

Duty to register civil partnerships changed into marriages

23.—(1) The registration officer for a consular district, nominated for such purposes by the Secretary of State, must maintain a register and register in it every declaration signed by the registration officer in accordance with article 22(2) (consular change procedure).

(2) Every nominated registration officer must, at such times as are determined by the Secretary of State, send to the Registrar General for England and Wales a copy of all declarations registered

by the registration officer since those details were last sent, and if the officer has not registered a declaration over the relevant time period, confirmation of that fact.

(3) On receipt of the declarations in accordance with paragraph (2), the Registrar General for England and Wales must send them to the Registrar General of Births, Deaths and Marriages for Scotland.

(4) A certified copy of any entry in a register must be provided by the Secretary of State upon request by any person until such time as an extract is available from the Registrar General of Births, Deaths and Marriages for Scotland.

Power to dispense with requirements

24.—(1) If the Secretary of State is satisfied that there are good reasons why the requirement as to residence in article 21(b)(i) (consular declaration) cannot be complied with, the Secretary of State may authorise the registration officer to amend this part of the declaration to reduce the residence period.

(2) The Secretary of State must notify the registration officer in writing of the decision to reduce the residence period and provide a statement of reasons for the decision.

(3) If the Secretary of State authorises the registration officer to amend the declaration in accordance with paragraph (1), the registration officer must record the statement of reasons referred to in paragraph (2) and initial the amendment made to the declaration.

CHAPTER 4

Armed forces marriage between civil partners

Interpretation

25. In this Chapter—

- (a) a reference to a country or territory includes a reference to the waters of a country or territory;
- (b) a reference to Her Majesty’s forces serving in a country or territory includes a reference to such forces serving in a ship in the waters of a country or territory;
- (c) a reference to a relevant civilian employed in a country or territory includes a reference to such a civilian employed in a ship in the waters of a country or territory;
- (d) “authorised person” has the same meaning as in paragraph 12(2)(b) of Schedule 6 to the 2013 Act;
- (e) “declaration” has the meaning given in article 28 (armed forces declaration);
- (f) “Her Majesty’s forces” has the same meaning as in the 2006 Act;
- (g) “relevant civilian” means a civilian subject to service discipline within the meaning of the 2006 Act.

Countries or territories in which armed forces marriage between civil partners may take place

26.—(1) An authorised person may facilitate a civil partnership being changed into a marriage in those countries or territories outside the United Kingdom which have notified the Secretary of State in writing that there is no objection to such changes taking place in that country or territory and which have not subsequently revoked that notice, where at least one of the parties to the civil partnership is—

- (a) a member of Her Majesty’s forces serving in the country or territory in which it is proposed they change their civil partnership into a marriage;
 - (b) a relevant civilian who is employed in that country or territory;
 - (c) a child of a person falling within sub-paragraph (a) or (b) whose home is with that person in that country or territory.
- (2) In a case where one person (“P”) treats, or has treated, another person (“C”), as a child of the family in relation to—
- (a) a marriage to which P is or was a party; or
 - (b) a civil partnership to which P is or was a party,
- C is to be regarded for the purposes of paragraph (1)(c) as the child of P.

Armed forces change of civil partnership into marriage

27.—(1) Parties to a civil partnership are to be regarded as having changed their civil partnership into a marriage when they have signed the declaration and followed the procedure set out in paragraph (1) of article 29 (armed forces change procedure) and the authorised person has signed the declaration in accordance with paragraph (2) of that article.

- (2) No religious service is to be used during the procedure set out in that article.

Armed forces declaration

28. Before the parties to a civil partnership can change their civil partnership into a marriage in accordance with this Chapter, each of the parties must sign a declaration containing—

- (a) the following details pertaining to each of the parties—
 - (i) forename(s);
 - (ii) surname;
 - (iii) nationality;
 - (iv) date of birth;
 - (v) sex;
 - (vi) address;
 - (vii) in respect of each of the parties to the civil partnership who fall within one of the descriptions in article 26(1) (countries or territories in which armed forces marriage between civil partners may take place)—
 - (aa) where that person is a member of Her Majesty’s forces serving in the country or territory in which it is proposed they change their civil partnership into a marriage, the name and location of the unit in which that person is serving;
 - (bb) where that person is a relevant civilian employed in that country or territory, the name and location of the post where that person is employed;
 - (cc) where the person falls within the description in article 26(1)(c) (but does not fall within either paragraph (a) or (b) of that article), the information referred to in (as the case may be) head (aa) or (bb) about each of that person’s parents who falls within the description in paragraph (a) or (b) of that article; and
- (b) a statement to the effect that—
 - (i) the parties are in an existing civil partnership with each other; and

- (ii) each of the parties knows of no reason why the civil partnership should not be converted into a marriage.

Armed forces change procedure

29.—(1) The parties to a civil partnership must, in order to change their civil partnership into a marriage in accordance with this Chapter—

- (a) attend in person before the authorised person;
- (b) provide evidence of the formation of their civil partnership with each other; and
- (c) provide such evidence as may be required by the authorised person to satisfy the authorised person of the details provided in the declaration.

(2) Once the parties to the civil partnership have signed the declaration referred to in article 28, the authorised person must, in the presence of the parties, also sign the declaration.

Duty to register civil partnerships changed into marriages

30.—(1) The authorised person must maintain a register and therein register every change of a civil partnership into a marriage signed by the authorised person in accordance with article 29(2) (armed forces change procedure).

(2) The authorised person must send to the Registrar General for England and Wales a copy of the declaration signed in accordance with article 29(2).

(3) On receipt of the declarations in accordance with paragraph (2), the Registrar General for England and Wales must send them to the Registrar General of Births, Deaths and Marriages for Scotland.

PART 6

Consequential modifications

31. Schedules 5 and 6 to this Order (which make consequential modifications to primary and secondary legislation respectively) have effect.

Dover House,
London
Date

Name
Parliamentary Under Secretary of State
Scotland Office