

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 1 – Marriage

Chapter 2 – Marriage between civil partners in qualifying civil partnerships

Overview

42. This Chapter relates to changing a civil partnership to a marriage and the legal effect of doing so.

Section 8: Marriage between civil partners in qualifying civil partnerships

43. **Section 8** makes provision allowing civil partners, if they are in a “qualifying civil partnership”, to change their civil partnership to a marriage.
44. A “qualifying civil partnership” is defined by the amendment made by subsection (3) (b), which inserts new subsections (6) and (7) into section 5 of the 1977 Act. To be a “qualifying civil partnership”, the civil partnership must have been registered in Scotland. In addition, the civil partnership must not have been dissolved, annulled or ended by death.
45. Subsection (3) also adds provisions to section 5 of the 1977 Act about civil partnerships registered at British consulates overseas and civil partnerships registered by British armed forces personnel.
46. Such civil partnerships are to be treated as having been registered in Scotland for the purposes of determining if they are a “qualifying civil partnership”, so long as:
- (a) the parties to the civil partnership elected Scotland as the relevant part of the United Kingdom when they entered into the civil partnership; and
 - (b) details of the civil partnership have been sent to the Registrar General for Scotland.
47. Subsection (2) amends section 3 of the 1977 Act so that when a couple change their civil partnership to a marriage they have to provide to the district registrar an extract from the entry in the civil partnership register relating to the civil partnership.
48. Subsection (3)(a) amends section 5(4)(b) of the 1977 Act about legal impediments to marriage. The current impediment in section 5(4)(b) is that “one of the parties is, or both are, already married or in civil partnership”. Subsection (3)(a) amends this so that being in a “qualifying civil partnership” with each other is not a legal impediment to marriage.

Section 9: Power to modify meaning of “qualifying civil partnership”

49. This section allows the Scottish Ministers to extend by order the category of civil partnerships which can change their relationship to marriage in Scotland. This power could be used to enable civil partners in a partnership registered outwith Scotland to change their civil partnership to a marriage in Scotland.
50. Subsection (2) provides the order may amend primary or secondary legislation and is subject to affirmative procedure.
51. Subsection (3) requires the Scottish Ministers to consult the Registrar General of Births, Deaths and Marriages for Scotland and such other persons as considered appropriate on a copy of the proposed draft order before laying a draft of any such order before the Scottish Parliament.

Section 10: Change of qualifying civil partnership into marriage

52. Section 10 makes provision so that qualifying civil partnerships can be changed to a marriage in accordance with an administrative procedure which may be prescribed by the Scottish Ministers in regulations.
53. By virtue of section 10(7), “qualifying civil partnership” in this section means a civil partnership registered in Scotland which has not been dissolved, annulled or ended by death (see section 5(6) of the 1977 Act, inserted by section 8(3) of this Act). The definition also includes certain overseas civil partnerships treated as having been registered in Scotland (see section 5(7) of the 1977 Act, inserted by section 8(3) of this Act). The definition could be modified by the use of the power in section 9 of the Act.
54. Subsection (2) provides that regulations may in particular make provision on:
- the application process (subsection (2)(a));
 - the information required from the applicants (subsection (2)(b));
 - evidence to support the application (subsection (2)(c));
 - any requirement to attend at a particular place or appear before a particular person (subsection (2)(d));
 - conferring functions on persons (such as, for example, the Registrar General) (subsection (2)(e)). (Subsection (3) makes provision on particular functions which may be conferred);
 - fees (subsection (2)(f)).
55. Subsections (4) to (6) make provision on procedures in relation to any regulations made by the Scottish Ministers. Under subsection (4), the Scottish Ministers must consult the Registrar General before making any regulations. Under subsections (5) and (6), any regulations are subject to negative Parliamentary procedure unless they amend primary legislation, in which case they are subject to the affirmative procedure.

Section 11: Effect of marriage between civil partners in a qualifying civil partnership

56. This section makes provision on the effect of civil partners changing their relationship to a marriage.
57. Subsection (1) ensures that this provision applies to civil partners who change their relationship (registered in Scotland) to a marriage, regardless of whether they make this change through having a marriage ceremony (section 8 of the Act) or through the administrative route (section 10 of the Act).

*These notes relate to the Marriage and Civil Partnership (Scotland)
Act 2014 (asp 5) which received Royal Assent on 12 March 2014*

58. Subsection (2)(a) provides that the qualifying civil partnership ends when the marriage is solemnised or the change took effect and subsection (2)(b) provides that 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.
59. Subsection (2)(a) ensures that the couple do not have two civil statuses (married and in a civil partnership) at the same time. Subsection (2)(b) ensures that their time in the civil partnership is treated as if they had been married. For example, this means that provisions in the Family Law (Scotland) Act 1985, which covers matters such as financial provision during marriage and on divorce, applies to property acquired during and for the civil partnership as well as to property acquired during and for the marriage.
60. Subsection (3) defines what is meant by “registered” for the purposes of subsection (2) (b) in relation to civil partnerships originally registered at British consulates overseas or by British armed forces personnel. Civil partnerships at consulates are treated as registered when they are entered in the Register Book. Civil partnerships through the armed forces are treated as registered when the register is signed.
61. Subsection (4) makes provision so that subsection (2)(b) is subject to any contrary provision made in legislation and any order made under subsection (5). For example, provision may be needed in relation to civil partnerships which turn out to be void but are changed into marriage before it is realised that they are void so the marriage is not backdated to when the civil partnership first started. In addition, there may be a need to recognise any court decrees from outwith Scotland which relate specifically to civil partnerships. The scope of any order and its Parliamentary procedure are set out in subsection (6).
62. Subsection (7) provides that any decree of aliment requiring one civil partner to make payments to the other which is in force when a civil partnership ends because it has been changed into a marriage continues to have effect. This ensures that any reference in the decree to the civil partnership does not stop the decree from continuing to have effect.
63. Subsection (8) provides that orders under section 103(3) or (4) of the 2004 Act, which relate to the regulation by the court of rights of occupancy of the family home, which were in force during the civil partnership continue to have effect once the couple are married.
64. Subsection (9) makes consequential amendments to section 1 of the 2004 Act, which contains provision on the circumstances in which a civil partnership ends.