

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014

EXPLANATORY NOTES

SCHEDULES

Schedule 2: Change of gender of married persons or civil partners

Part 1 – Applications by married persons and civil partners

Overview

Paragraph 4 – successful applications

255. **Paragraph 4** amends section 4 of the Gender Recognition Act by inserting a new subsection (1A) and by amending and adding to subsections (2), (3), (3A) and (3B) (as substituted and inserted by paragraph 3 of Schedule 5 to the Marriage (Same Sex Couples) Act 2013). Section 4(2) to 4(3B) of the Gender Recognition Act makes provision on the issue of a gender recognition certificate following successful application. The type of certificate received, whether full or interim, depends on the marital or civil partnership status of the applicant and, in the case of a married applicant, whether the applicant's spouse has consented to the marriage continuing following the issue of a full gender recognition certificate.
256. Section 4(2) to (3B) applies in relation to applicants who are either (i) a party to a marriage under the law of England and Wales or under the law of a country or territory outside the UK ("a protected marriage") or (ii) a party to a civil partnership under the law of England and Wales ("a protected civil partnership"). The amendments made by paragraph 4 of schedule 2 to the Act make similar provision to that in section 4(2) to 4(3B) of the Gender Recognition Act but, aside from the provision about single applicants, these amendments apply in relation to applicants who are a party to a protected Scottish marriage or a protected Scottish civil partnership.
257. The effect of these amendments is to enable a full certificate to be issued:
- to single applicants (new subsection (1A));
 - to applicants who are party to a protected Scottish marriage and both parties to the marriage consent to the marriage continuing (new subsection (3C)(a)); and
 - to applicants who are party to a protected Scottish civil partnership and the Panel has decided to issue the other party to the civil partnership with a full gender recognition certificate (new subsection (3C)(b)).
258. Interim gender recognition certificates will be issued:
- to applicants in protected Scottish marriages if either party to the marriage has not consented to the marriage continuing (new subsection (3D)(a));

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

- subject to subsection (2)(b) (which makes provision about applicants in a protected marriage), to applicants not in a protected Scottish marriage (new subsection (3D)(b));
 - to applicants in protected Scottish civil partnerships where the other party to the civil partnership has not made an application for a gender recognition certificate at the same time as the applicant or the other party has made such an application but the Panel has decided not to issue a full gender recognition certificate to the other party (new subsections (3D)(c) and (3D)(d)); and
 - subject to subsection (2)(c) (which makes provision about applicants in a protected civil partnership), to applicants in a civil partnership which is not a protected Scottish civil partnership (new subsection (3D)(e)).
259. New subsection (3E) requires the Panel to notify an applicant's spouse where it issues a full gender recognition certificate to the applicant.
260. New subsection (3F) provides that section 4(3C)(b) of the Gender Recognition Act is subject to new section 5C (inserted into that Act by paragraph 7 of this schedule).