

# MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 4 – Change of gender of married persons or civil partners**

##### **Overview**

208. Under the Gender Recognition Act 2004, persons over 18 may apply to the Gender Recognition Panel (“the Panel”) to obtain full legal recognition of an acquired gender. Currently, married people and people in a civil partnership have to divorce or dissolve the civil partnership before obtaining a full gender recognition certificate. Part 4, and schedule 2, make provision so that married people who wish to stay married do not have to divorce and to enable people in a civil partnership to stay in their relationship.

##### ***Section 29: Change of gender of married persons or civil partners***

209. This section introduces schedule 2 to the Act on applications to the Panel by married persons or persons in a civil partnership. This schedule is explained at paragraphs 244 to 306 of these Explanatory Notes.

##### ***Section 30: Renewed marriage or civil partnership following issue of full gender recognition certificate***

210. **Section 30** empowers the Scottish Ministers to make regulations (i) about the solemnisation of a renewed marriage for married persons in a protected Scottish marriage who have obtained a full gender recognition certificate and (ii) about the registration of a renewed civil partnership between the parties to a protected Scottish civil partnership following the issue of full gender recognition certificates to both parties to the partnership. This would enable a new marriage or civil partnership certificate to be issued.

211. By virtue of section 30(7), “full gender recognition certificate” is defined by reference to the existing definition in section 25 of the Gender Recognition Act 2004. “Protected Scottish marriage” is also defined by reference to section 25 of the Gender Recognition Act 2004 as amended by paragraph 2 of schedule 2 to this Act.

212. Subsection (2) provides that regulations under subsection (1) may in particular make provision about:

- submitting notice of an intention to enter into a renewed marriage (subsection (2) (a));
- submitting notice of an intention to enter into a renewed civil partnership (subsection (2)(b));
- the information required from the applicants (subsection (2)(c));

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

- evidence to support the application (subsection (2)(d));
  - any requirement to attend at a particular place or appear before a particular person (subsection (2)(e));
  - conferring functions on persons (such as, for example, the Registrar General) (subsection (2)(f)). (Subsection (3) makes provision on particular functions which may be conferred);
  - fees (subsection (2)(g)).
213. Subsections (4) to (6) make provision on procedures in relation to any regulations made by the Scottish Ministers.
214. 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 procedures unless they amend primary legislation, in which case they are subject to the affirmative procedure.

***Section 31: Grounds of divorce: interim gender recognition certificate followed by full certificate***

215. **Section 31** amends the Divorce (Scotland) Act 1976. Under section 1(1)(b) of the 1976 Act, the issue of an interim gender recognition certificate is one of the grounds for divorce in Scotland. Section 31(3), however, amends section 1 of the 1976 Act (i) to provide that a divorce cannot be obtained on the grounds of the issue of the interim gender recognition certificate where *the Panel* has gone on to issue a full gender recognition certificate, but (ii) to ensure that where *the sheriff* issues the full gender recognition certificate under section 4E, divorce on the grounds of the issue of the interim gender recognition certificate will still be available.