

# MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY

#### Part 1 – Marriage

##### *Chapter 1 – Same sex marriage*

#### Overview

5. This Chapter makes a number of changes to marriage law. In particular, it amends the 1977 Act, in relation to the “forbidden degrees” (about people who are too closely related to each other to get married) to reflect the introduction of same sex marriage; it deals with existing references to marriage and related expressions in legislation and private documents, such as wills; and it clarifies how certain common law rules will operate in the context of a same sex marriage.

##### *Section 1: Marriage of related persons*

6. This section makes a number of amendments to the 1977 Act, in relation to the “forbidden degrees”. Provision is made about the forbidden degrees in section 2 of, and Schedule 1 to, the 1977 Act. Section 2 of the 1977 Act makes various provisions about how the forbidden degrees are to operate and be interpreted. Some of these provisions refer at present to a husband and wife or make other indirect references to opposite sex marriage. Due to the introduction of same sex marriage, these provisions are amended by section 1 of the Act so that they can apply to opposite sex and same sex marriage. Section 1(2)(c) makes provision so that “spouse” means either a wife of a husband or a husband of a wife or a same sex spouse.
7. **Section 1** introduces a new Schedule 1 to the 1977 Act, replacing the previous Schedule 1. Section 1(2)(d) deletes the word “former” from section 2(7) of the 1977 Act. The word “former” is not needed as the new Schedule 1 to the 1977 Act refers to “former spouse” and “spouse” is defined as outlined in paragraph 6 above. The new Schedule 1 is a simplified version of the previous table of forbidden degrees in the 1977 Act. No changes are made in respect of the types of relationships which mean that a couple cannot marry. Instead, the change relates to how the relationships are described. The table below demonstrates this:

<i>Previous table (Column 1)</i>	<i>Previous table (Column 2)</i>	<i>New table</i>
<b><i>Relationships by consanguinity</i></b>		
Mother	Father	Parent
Daughter	Son	Child
Father’s mother	Father’s father	Grandparent

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<b><i>Previous table (Column 1)</i></b>	<b><i>Previous table (Column 2)</i></b>	<b><i>New table</i></b>
Mother's mother	Mother's father	Grandparent
Son's daughter	Son's son	Grandchild
Daughter's daughter	Daughter's son	Grandchild
Sister	Brother	Sibling
Father's sister	Father's brother	Aunt or uncle
Mother's sister	Mother's brother	Aunt or uncle
Brother's daughter	Brother's son	Niece or nephew
Sister's daughter	Sister's son	Niece or nephew
Father's father's mother	Father's father's father	Great-grandparent
Father's mother's mother	Father's mother's father	Great-grandparent
Mother's father's mother	Mother's mother's father	Great-grandparent
Mother's mother's mother	Mother's mother's father	Great-grandparent
Son's son's daughter	Son's son's son	Great-grandchild
Son's daughter's daughter	Son's daughter's son	Great-grandchild
Daughter's son daughter	Daughter's son's son	Great-grandchild
Daughter's daughter's daughter	Daughter's son son	Great-grandchild
<b><i>Relationships by affinity referred to in section 2(1A)</i></b>		
Daughter of former wife	Son of former husband	Child of former spouse
Daughter of former civil partner	Son of former civil partner	Child of former civil partner
Former wife of father	Former husband of mother	Former spouse of parent
Former civil partner of mother	Former civil partner of father	Former civil partner of parent
Former wife of father's father	Former husband of father's mother	Former spouse of grandparent
Former civil partner of mother's mother	Former civil partner of mother's father	Former civil partner of grandparent
Former wife of mother's father	Former husband of mother's mother	Former spouse of grandparent
Former civil partner of father's mother	Former civil partner of father's father	Former civil partner of grandparent
Daughter of son of former wife	Son of son of former husband	Grandchild of former spouse
Daughter of son of former civil partner	Son of son of former civil partner	Grandchild of former civil partner
Daughter of daughter of former wife	Son of daughter of former husband	Grandchild of former spouse

<i>Previous table (Column 1)</i>	<i>Previous table (Column 2)</i>	<i>New table</i>
Daughter of daughter of former civil partner	Son of daughter of former civil partner	Grandchild of former civil partner
<b><i>Relationships by adoption</i></b>		
Adoptive mother or former adoptive mother	Adoptive father or former adoptive father	Adoptive parent or former adoptive parent
Adopted daughter or former adopted daughter	Adopted son or former adopted son	Adopted child or former adopted child

### ***Section 2: Objections to marriage***

8. Section 5 of the 1977 Act provides for situations where there is an objection to a marriage proceeding. Section 5(4) lists the legal impediments to a marriage. These include where one or both parties are already married; where both parties are of the same sex or where one or both parties are not domiciled in Scotland and marriage would be void according to the law of the party's domicile.
9. [Section 2](#) of the Act repeals the legal impediment of both parties being of the same sex, so that marriages between two people of the same sex can take place in Scotland, once the Act is commenced.
10. [Section 2](#) of the Act also amends section 5(4) of the 1977 Act in relation to cases where one or both of the parties are not domiciled in Scotland.
11. The amendment makes it clear that even if a same sex marriage would be void according to the law of the domicile of one (or both) of the parties, that is not a barrier to the parties entering into a same sex marriage in Scotland.

### ***Section 3: Preliminaries to marriage***

12. This section makes some amendments to sections 3 and 7 of the 1977 Act. Section 3 of the 1977 Act makes provision about the procedures a couple must go through when they want to marry. They must submit to a district registrar a notice of intention to marry, with the prescribed fee, their birth certificates and certain other documents, which are specified in section 3 of the 1977 Act.
13. Subsection (2)(a) substitutes a new paragraph (b) in section 3(1) of the 1977 Act, to remove terms like "widow", "widower" and "spouse". The new paragraph instead refers to "the other party" to the marriage. Despite the change in terminology, the effect of the provision remains the same. When a marriage has ended because one of the parties has died, a person who is marrying again has to provide the death certificate of the deceased party.
14. Section 3(1) of the 1977 Act is also amended so that any person who wants to get married who has a civil partner who has died is required to submit the relevant death certificate. Section 8 of the Act amends section 3 of the 1977 Act so that if a person who wants to get married is changing from a civil partnership to a marriage, that person must submit a relevant extract from the civil partnership register.
15. Section 3(2) of the 1977 Act makes provision in cases where someone intending to get married cannot supply the birth certificate or some of the other documents required by section 3(1). In essence, a person in this position has to supply the district registrar with a declaration on why the documents cannot be submitted.
16. The obligation in section 3(2) of the 1977 Act is extended by subsection (2)(b) so that it also applies to the additional documents required as set out in paragraph 15 above.

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For more information on the process of changing from a civil partnership to a marriage, see the explanatory notes on sections 8 to 10.

17. Section 3(5) of the 1977 Act makes provision where one or both of the parties to the marriage is not domiciled in Scotland. Under section 3(5), such a party is required, if practicable, to submit a certificate issued by the party's home jurisdiction which confirms that there is no legal bar to the party marrying in terms of the law of the home jurisdiction.
18. There are some exceptions in section 3(5) to the need to supply such a certificate. Subsection (2)(c) amends section 3(5) to provide that a certificate is not required if it would not be issued just because the parties to the marriage are of the same sex.
19. Section 7 of the 1977 Act allows a person who wants to marry outwith Scotland to apply to a district registrar in Scotland for a certificate in respect of a person's capacity to marry. When applying, the person must submit certain documents to the registrar.
20. Subsection (3) amends section 7(1) so it refers also to the death certificate when a civil partnership has ended by death and an extract from the entry in the civil partnership register where civil partners are changing their civil partnership to a marriage.

***Section 4: Meaning of marriage and related expressions in enactments and documents***

21. **Section 4** makes provision on how the term "marriage" and other expressions should be interpreted in enactments (legislation) generally, the 1977 Act specifically, the common law and private documents (such as wills). The provisions of section 4 apply only to devolved legislation – legislation that is within the legislative competence of the Scottish Parliament.
22. Subsection (1) provides that references in enactments to "marriage" and people who are or were married should be read as referring to both opposite and same sex marriage and married couples. This would, for example, apply to terms in those enactments such as "husband", "wife", "man and wife" and "spouse".

*Examples*

*Section 1 of the Divorce (Scotland) Act 1976 makes provision on the irretrievable breakdown of marriage being a ground for divorce. By virtue of **section 4** of this Act, this will apply to both opposite sex and same sex marriages.*

*Section 1 of the Family Law (Scotland) Act 1985 makes provision on who owes an obligation of aliment. Under **section 1**, an obligation of aliment is owed by a husband to his wife and by a wife to her husband. By virtue of **section 4** of this Act, the obligation is also owed by a spouse to his or her same sex spouse.*

23. Subsections (2) and (3) make provision in respect of references in legislation to cohabitants, so it is clear they apply to same sex cohabitants too.
24. Subsection (4) provides that references in legislation to two persons of the same sex who are (or were) living together as if they are or were in a civil partnership (i.e. cohabitants) cease to have effect. Once the Act comes into force, such references will be unnecessary as same sex cohabitants will be covered by the provision made in subsections (2) and (3).

*Example*

*Section 25 of the Family Law (Scotland) Act 2006 defines "cohabitant" for the purposes of sections 26 to 29 of the 2006 Act. The provisions at **section 4(2) to (4)** of this Act mean that the reference to living together as if husband and wife extends to persons of the same sex living together as if married and the reference to living together as if civil partners ceases to have effect.*

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25. Subsection (5) makes it clear that subsections (1) to (4) only apply to enactments, other than private Acts, passed or made before section 4 is commenced. (As outlined below, subsection (15) makes changes to the Interpretation and Legislative Reform (Scotland) Act 2010 in respect of future legislation). Subsection (5) also makes it clear that subsections (1) to (4) do not apply if the enactment or any other enactment provides otherwise.
26. Subsection (6) ensures that where being (or having been) married or in a purported marriage is relevant in the common law, the law applies equally to opposite sex and same sex marriage.
27. Subsection (8) empowers the Scottish Ministers to make an order, which due to subsection (9) will generally be subject to the negative procedure, to disapply or modify the effect of subsections (1) to (6).
28. Subsection (9) ensures that any order under subsection (8) may amend primary and secondary legislation. Subsection (10) ensures that, despite an order under subsection (8) generally being subject to negative procedure, any such order which amends primary legislation is subject to affirmative procedure.
29. For private documents which are executed after section 4 comes into force, subsection (11) provides that references in them to “marriage” or people being (or having been) married should be read as referring to both opposite and same sex marriage and married couples. This would, for example, apply to terms in private documents such as “husband”, “wife”, “man and wife” and “spouse”. Subsection (12) makes provision about the interpretation of “widow” and “widower” in documents executed after section 4 comes into force.
30. By virtue of subsection (13), subsections (11) and (12) do not apply to documents where the document provides otherwise. Therefore, if a document executed after section 4 comes into force refers to a person being in an opposite sex marriage, subsection (11) would not enable that reference to be read as meaning a same sex marriage as well.
31. Subsection (14) adds a definition of “marriage” to the 1977 Act, referring to both opposite sex and same sex marriage. Section 26 of the 1977 Act, which contains a number of definitions, makes it clear that the definitions are to apply in the 1977 Act “except where the context otherwise requires”. An example would be the separate provisions of the 1977 Act, as amended or inserted by this Act, on solemnising opposite sex and same sex marriage.
32. Subsection (15) adds definitions of “marriage”, “widow” and “widower” to the Interpretation and Legislative Reform (Scotland) Act 2010. The 2010 Act makes provision on how Acts of the Scottish Parliament and Scottish Statutory Instruments are to be interpreted. Adding a definition of “marriage” to the 2010 Act means that any references to marriage and married couples in any future Acts of the Scottish Parliament and legislation made under Acts of the Scottish Parliament will cover both opposite sex and same sex marriage and spouses, unless specific provision is made so that this is not the case. The new definitions of “widow” and “widower” make it clear that in future Acts of the Scottish Parliament and legislation made under Acts of the Scottish Parliament “widow” will include the female spouse of a deceased woman and “widower” the male spouse of a deceased man, unless contrary provision is made.

***Section 5: Same sex marriage: further provision***

33. This section makes provision relating to the introduction of same sex marriage and its effect on certain aspects of Scots law.
34. Subsection (1) makes provision in respect of permanent and incurable impotency. In Scotland, a marriage is voidable (i.e. a court action may be raised to challenge and end the marriage) if one of the parties is at the time of the marriage permanently and

incurably impotent in relation to the other spouse. Subsection (1) provides that this rule of law only applies to opposite sex marriages.

35. Subsection (2) amends section 1 of the Divorce (Scotland) Act 1976 (“the 1976 Act”). Under the 1976 Act, there are two grounds of divorce in Scotland:
- (a) irretrievable breakdown of the marriage;
  - (b) the issue, after the date of marriage, to either party of an interim gender recognition certificate under the Gender Recognition Act 2004.
36. Section 1(2) of the 1976 Act provides a number of ways in which the irretrievable breakdown of a marriage can be established. One of those ways is adultery. Adultery means in the common law sexual intercourse between a man and a woman.
37. Subsection (2) provides that “adultery” has the same meaning for the purposes of the 1976 Act for same sex marriage as it does for opposite sex marriage in that it relates to heterosexual intercourse only. This means that a spouse in a same sex marriage could, like a spouse in an opposite sex marriage, raise an action for divorce saying that the marriage has broken down irretrievably because the other spouse in the marriage has committed adultery (i.e. had sexual intercourse with a person of the opposite sex).
38. However, subsection (2) does not extend adultery to cover sexual activity between people of the same sex. Therefore, the ways of establishing irretrievable breakdown of a marriage remain unchanged. Neither an opposite sex spouse nor a same sex spouse can raise an action for divorce saying that the marriage has broken down irretrievably because the other party in the marriage has had sexual intercourse with a person of the same sex. Instead, the divorce action would have to put forward other reasons for irretrievable breakdown, such as unreasonable behaviour.

### ***Section 6: Jurisdiction in proceedings relating to same sex marriages***

39. This section introduces schedule 1 on the jurisdiction of the Scottish courts in proceedings relating to same sex marriages. This schedule is explained at paragraphs 219 to 243 of these Explanatory Notes.

### ***Section 7: Reset: abolition of defence***

40. This section repeals the defence for wives against the crime of reset. It is a crime to receive goods stolen by another. Subsection (1) abolishes the common law defence to the crime where the person accused of reset is the wife, and the goods were stolen by her husband.
41. Subsection (2) provides that the repeal of the defence to the crime of reset is abolished the day after the provision is brought into force. This means that the repeal will not affect anyone who is relying on the defence prior to this section being commenced.

## ***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

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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));

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- 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).
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.

### **Chapter 3 – Solemnisation of marriage**

#### **Overview**

65. This Chapter makes provision about who may be authorised to solemnise marriage in Scotland.
66. For opposite sex marriage, Church of Scotland ministers are authorised by way of the Church of Scotland being named specifically in section 8 of the 1977 Act. Other religious bodies may be prescribed by Statutory Instrument so that their celebrants are authorised to solemnise marriage. Other religious bodies can also nominate persons to be registered by the Registrar General for Scotland as celebrants under section 9 of the 1977 Act. And the Registrar General may grant temporary authorisation to individuals to solemnise a marriage or marriages under section 12 of the 1977 Act.
67. In addition, civil registrars are authorised to solemnise marriage.
68. The Act retains this system but makes provision for belief bodies to be authorised as well.

#### **Section 12: Persons who may solemnise marriage**

69. Section 12 of the Act makes amendments to the 1977 Act for several different purposes.
70. Firstly, section 8 of the 1977 Act makes provision on who is authorised to solemnise marriage. This is amended so its current provisions apply to authorisations for opposite sex marriage only.
71. Secondly, section 12 of the Act amends section 8 of the 1977 Act to allow celebrants from belief bodies to be authorised to solemnise marriages. Subsection (4) amends the existing definition of “religious body” in section 26 of the 1977 Act so that it covers belief bodies as well. The relevant aspects of the amended definition in relation to belief bodies are “an organised group of people ...the principal object (or one of the principal objects) of which is to uphold or promote philosophical beliefs and which meets regularly for that purpose.”
72. Religious bodies can be prescribed under section 8 of the 1977 Act. The section is amended so that religious or belief bodies can be prescribed under this section. The effect of prescribing religious or belief bodies is that their celebrants and other persons recognised by them as entitled to solemnise opposite sex marriage can solemnise opposite sex marriages recognised by the state.
73. Thirdly, the new section 8(1A) of the 1977 Act, inserted by subsection (2)(b), provides that the Scottish Ministers may only prescribe a religious or belief body so that its celebrants are authorised to solemnise opposite sex marriage if the body requests this and if Ministers are satisfied that the body meets the “qualifying requirements”. Qualifying requirements are those set out in regulations made by the Scottish Ministers. These regulations are subject to the negative parliamentary procedure (new section 8(1G) refers).
74. Fourthly, section 12 of the Act adds a number of provisions to section 8 of the 1977 Act to allow celebrants (of religious and belief bodies) to be authorised to solemnise same sex marriage. The new section 8(1B) of the 1977 Act, inserted by subsection (2)(b), provides who may solemnise a same sex marriage. The new section 8(1C) provides that the Scottish Ministers may only prescribe a religious or belief body so that its celebrants are authorised to solemnise same sex marriage if the body requests this and if Ministers are satisfied that the body meets the “qualifying requirements”.

75. Fifthly, the new section 8(1D) provides that nothing in subsection (1B)(a) or (1C)(a):
- (a) imposes a duty on any religious or belief body to request (under section 8(1C)(a)) to be prescribed so that their celebrants can solemnise same sex marriage;
  - (b) imposes a duty on any religious or belief body to nominate members under section 9 of the 1977 Act to be empowered to solemnise same sex marriage;
  - (c) imposes a duty on any person to apply for temporary authorisation under section 12 to solemnise same sex marriage;
  - (d) imposes a duty on a celebrant approved to solemnise same sex marriages to solemnise such marriages.

### ***Section 13: Registration of nominated persons as celebrants***

76. **Section 13** makes a number of amendments to section 9 of the 1977 Act, which relates to the registration of nominated persons as celebrants. Section 9 of the 1977 Act permits the authorisation of celebrants of bodies who have not been prescribed by regulations or are not, in the case of opposite sex marriage, the Church of Scotland.
77. Subsection (2)(a) amends section 9(1) of the 1977 Act so that it just relates to opposite sex marriages. This means that section 9(1) as amended provides that a religious or belief body, other than the Church of Scotland or a body prescribed by regulations to solemnise opposite sex marriage, may nominate to the Registrar General members so that that they can solemnise opposite sex marriages.
78. Subsection (2)(b) to (l) then inserts new subsections into section 9 of the 1977 Act. The new section 9(1A), inserted by subsection (2)(b), provides that a religious or belief body who has not been prescribed by regulations to solemnise same sex marriage may nominate celebrants to the Registrar General so that they can be authorised to solemnise same sex marriage.
79. A number of amendments are made to section 9 of the 1977 Act, which provides for when the Registrar General must reject a nomination; what happens when a nomination is accepted; the register of authorised celebrants and their bodies; and for appeals. These amendments are made to take account of the introduction of same sex marriage and the authorisation of belief bodies and their celebrants.
80. Under section 9(2) of the 1977 Act, the Registrar General must reject a nomination on various grounds including if the Registrar General considers the nominating body has sufficient celebrants to meet its needs. The amendment in subsection (2)(c) amends the grounds to reflect the changes made to subsection (1) and the new subsection (1A). The amendments reflect that bodies may have different needs in relation to celebrants solemnising same sex marriage when compared with opposite sex marriage.
81. A new ground for rejection of not meeting the qualifying requirements is added to section 9(2)(e) by subsection (2)(d) to the circumstances in which the Registrar General must reject a nomination.
82. Under section 9(2) of the 1977 Act, the Registrar General must also reject a nomination on the ground that the marriage ceremony used by the nominating body is not of an appropriate form. Section 9(3) of the 1977 Act sets out that a marriage ceremony will be of an appropriate form if it includes, and is no way inconsistent with particular declarations. Subsection (2)(f) amends section 9(3) to expand upon the declarations which will be considered to be of an appropriate form in the case of a marriage ceremony between persons of different sexes.
83. **Section 9(3)** (as amended) permits the Registrar General to accept nominations from religious and belief bodies which use (i) only gender specific language in marriage declarations, (ii) only gender neutral language in marriage declarations or

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(iii) a combination of both gender specific and gender neutral language in marriage declarations.

84. Subsection (2)(g) inserts provisions about the declarations for same sex ceremonies.
85. Subsection (2)(h) makes amendments to section 9(4) of the 1977 Act, which deals with cases where the Registrar General accepts the nomination. The Registrar General must currently decide how long the period of authorisation for the nominee should be, and may decide which area the nominee may solemnise marriages in. The amendments give the Registrar General the power to restrict any nominee to solemnising marriages in specific places.
86. Subsections (3), (4) and (5) make several amendments to sections 10, 14 and 24 of the 1977 Act. Section 10 makes provision about when a celebrant's name may be removed from the register of bodies and celebrants who are authorised to solemnise marriage. Section 14 is about the form of ceremony to be used by a celebrant. Section 24 is about offences under the 1977 Act.
87. The amendments made by subsections (3), (4) and (5) are consequential, as a result of changes made to other provisions of the 1977 Act about authorisation of belief bodies; maintaining separate registers for same sex and opposite sex marriages; creating separate declarations for same sex and opposite sex marriage ceremonies; and enabling the Registrar General to authorise a nominee celebrant for a particular place only.

***Section 14: Temporary authorisation of celebrants***

88. Section 12 of the 1977 Act allows the Registrar General to grant temporary authorisation to solemnise marriage to a person. Section 12(1)(a) relates to temporary authorisation for a specific marriage or marriages and section 12(1)(b) relates to temporary authorisation for a period of time.
89. Subsection (2)(a) amends the Registrar General's power to clarify that temporary authorisations may be granted only to members of religious or belief bodies.
90. Subsection (2)(b) inserts new subsection (1A) into section 12 of the 1977 Act to provide that the Registrar General may grant an authorisation only if the religious or belief body meets the "qualifying requirements". The "qualifying requirements" are those set out in regulations made by the Scottish Ministers (new section 12(1D)). These regulations are subject to the negative parliamentary procedure (new section 12(1F)).
91. Under section 12(1B), as inserted, temporary authorisation may be granted for opposite sex marriage only, for same sex marriage only or for both.
92. Under section 12(1C), as inserted, the Registrar General can only grant a temporary authorisation for a period of time under section 12(1)(b) to solemnise same sex marriages if the relevant religious or belief body is prescribed by regulations under section 8 so that its celebrants can solemnise same sex marriage or has nominated members under section 9 to solemnise same sex marriage.
93. Subsection (3) clarifies the existing offence under section 24(2)(c) of the 1977 Act of solemnising a marriage not covered by a temporary authorisation. The amendments made by subsection (3) have the effect that it is an offence to solemnise a marriage:
  - (a) where it is not specified in a temporary authorisation;
  - (b) where it is outwith the period of the temporary authorisation;
  - (c) otherwise than in accordance with any terms and conditions in the temporary authorisation.

***Section 15: Religious or belief marriage: further provision***

94. Sections 12, 13 and 14 of this Act make provision for celebrants of belief bodies to solemnise marriage. Section 15 makes a number of consequential amendments to sections 6, 11, 13, 14 and 15 of the 1977 Act, as a result of these provisions, to reflect the authorisation of belief bodies and their celebrants.

***Chapter 4 – Same sex marriage: protection of freedom of expression etc.***

***Section 16: Same sex marriage: protection of freedom of expression etc.***

95. This section provides that the introduction of same sex marriage does not affect:
- (a) the exercise of rights of anyone to freedom of thought, conscience, religion and freedom of expression which have been conferred by the European Convention on Human Rights; and
  - (b) the exercise of any equivalent rights conferred on anyone by the common law.

***Chapter 5 – Other changes to marriage procedure***

**Overview**

96. This Chapter makes a variety of changes to marriage law.
97. These include the introduction of powers for district registrars to require evidence of nationality from people wishing to get married; provisions on the timing of the issue of the Marriage Schedule; providing information to the district registrar on the ending of any civil partnership when a person is marrying outwith Scotland and is seeking a certificate about the person's legal capacity to do so; the automatic authorisation of Church of Scotland deacons to marry opposite sex couples and allowing civil marriage ceremonies to take place anywhere agreed by the couple and the registrar, other than religious premises.

***Section 17: Power of district registrar to require evidence of nationality: marriage***

98. This section makes amendments to sections 3 and 7 of the 1977 Act.
99. Section 3 of the 1977 Act makes provision about the documents which people wishing to enter into an opposite sex or same sex marriage have to supply to the district registrar.
100. Subsection (2) adds new subsections to section 3 of the 1977 Act so that a district registrar may require "specified nationality evidence" in relation to the intended parties to a marriage. Guidance can be issued by the Registrar General about what evidence is required.
101. Subsection (3) amends section 7 of the 1977 Act. This amendment means that where a person wants to marry outwith Scotland and seeks a certificate about legal capacity from the district registrar, that person may be required to provide evidence of nationality.

***Section 18: The Marriage Schedule***

102. This section amends the 1977 Act in relation to the power to prescribe the form of the Marriage Schedule and makes a number of changes to how quickly the marriage schedule and a certificate of no impediment should be issued after notice of intention to marry has been submitted by the parties to an intended marriage.
103. Subsection (2) amends section 6 of the 1977 Act so that regulations prescribing the form of the Marriage Schedule may make different provision for different cases or circumstances. This would, for example, allow the Marriage Schedule to take one form for opposite sex marriage and another for same sex marriage.

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104. Section 6(4)(a) of the 1977 Act provides that a district registrar shall not issue a Marriage Schedule within 14 days of receiving a marriage notice. A Schedule may be issued earlier, on a specified date, where there is a written request and the Registrar General authorises the registrar to issue the Schedule on the specified date. The amendment at subsection (2)(b) changes the 14 day period to 28 days.
105. Section 7 of the 1977 Act relates to the issue of a certificate of no impediment to marry where a person residing in Scotland intends to marry outwith Scotland. Section 7(2) provides that the certificate shall not be issued earlier than 14 days after receiving the marriage notice. The amendment at subsection (3) changes the 14 day period to 28 days.
106. Section 19 of the 1977 Act provides that an authorised registrar shall not solemnise a marriage within 14 days of receiving a marriage notice. The amendment at subsection (4) changes this period to 28 days. An exception in section 19(1) of the 1977 Act allows the marriage to be solemnised earlier, on a specified date, where there is a written request and the Registrar General authorises the registrar to solemnise the marriage on the specified date.

***Section 19: Marriage outside Scotland: evidence of dissolution of former civil partnership***

107. This section amends section 7 of the 1977 Act. The effect of the amendment is that where a person wants to marry outwith Scotland and seeks a certificate about the person's legal capacity from the district registrar the person must provide a copy of the decree of dissolution or annulment of any civil partnership which the person has previously been in.

***Section 20: Religious marriages: solemnisation by Church of Scotland deacons***

108. This section amends the provisions of section 8(1)(a)(i) of the 1977 Act about automatic authorisation of ministers of the Church of Scotland in respect of opposite sex marriage. The effect is that Church of Scotland deacons, like Church of Scotland ministers, are automatically authorised to solemnise opposite sex marriage.

***Section 21: Places at which civil marriages may be solemnised***

109. This section makes amendments, principally to section 18 of the 1977 Act, so that civil marriage ceremonies can take place anywhere, other than in religious premises, agreed by the couple and the registrar, rather than at "approved places" (places approved by the local authority). This section applies to both opposite sex and same sex marriages. The section provides definitions for "appropriate place", "local registration authority" and "religious premises".
110. Specifically, these amendments mean that a civil marriage ceremony can take place in either:
  - the registration office of the authorised registrar; or
  - at an appropriate place in the registration district of the authorised registrar; or
  - with the approval of the Registrar General, at the registration office of another authorised registrar; or
  - with the approval of the Registrar General, at an appropriate place in the registration district of another authorised registrar; or
  - with the approval of the Registrar General, at an appropriate place in Scottish waters.
111. As a result of the above, some amendments are necessary to the 1977 Act. Section 18A (on approved places) is repealed. Section 19 (on the marriage ceremony and registration) and section 26 (on interpretation and definitions) are amended where they

refer to the place where a marriage has taken place. Those amendments are made in subsections (3) to (5).

### **Section 22: Second marriage ceremony: form of endorsement**

112. This is a minor amendment to section 20 of the 1977 Act. This makes provision for a couple to go through a second marriage ceremony in Scotland if they have already married outwith the United Kingdom but there is some doubt about the validity of the overseas ceremony. The second marriage ceremony in Scotland must be civil in nature.
113. Section 20 of the 1977 Act sets out the process for a second marriage ceremony. Section 20 currently provides for an endorsement to be made to the Marriage Schedule by the authorised registrar, and the wording of that endorsement refers to years starting “19” reflecting only the 20<sup>th</sup> century. The amendment made by section 22 repeals those figures.

## **Chapter 6 – Sheriff court jurisdiction in relation to declarator of marriage**

### **Section 23: Sheriff court jurisdiction in relation to declarator of marriage**

114. A declarator of marriage is a court judgment that a valid marriage exists, or existed, between two parties.
115. [Section 23](#) clarifies the jurisdiction of the sheriff court in relation to declarators of marriage. It does so by amending section 8 of the Domicile and Matrimonial Proceedings Act 1973 (“the 1973 Act”).
116. The amendments made by section 23 of the Act to the 1973 Act only relate to opposite sex marriage. Paragraph 1(2) of schedule 1 to this Act disapplies section 8 (and section 7) of the 1973 Act in relation to same sex marriage. Schedule 1 to the Act makes provision on the jurisdiction of the Scottish courts in relation to same sex matrimonial court actions, including declarators of marriage.
117. By virtue of the amendments made by section 23(2) and (3), the sheriff court has jurisdiction in declarator of marriage cases when either party to the marriage (a) is domiciled in Scotland when the action is raised or (b) was habitually resident in Scotland for a year before the action is raised or (c) died before the date when the action is raised and at death was domiciled in Scotland or had been habitually resident in Scotland for a year. In addition, either party to the marriage must have been:
  - resident in the sheriffdom for a period of 40 days before the court action is raised; or
  - resident in the sheriffdom for at least 40 days ending not more than 40 days before the court action is raised and with no known residence in Scotland when the action is raised.

## **Part 2 – Civil partnership**

### **Overview**

118. This Part of the Act amends legislation about civil partnerships. Under the 2004 Act as enacted, only registrars can register civil partnerships. It is possible to have a religious or belief ceremony in relation to the civil partnership but any such ceremony has no legal significance. The Act amends legislation so that it is possible to have a religious or belief ceremony to register the partnership. Civil ceremonies also remain available.
119. Many of the provisions in this Act in relation to the authorisation of religious or belief celebrants to register civil partnerships, and on ceremonies, mirror provisions in the 1977 Act, on the solemnisation of marriage.

**Section 24: Registration of civil partnership**

120. Subsection (2) amends section 85 of the 2004 Act, to reflect the introduction of religious and belief celebrants to register civil partnerships. Section 85 makes provision on when two people are to be regarded as having registered as civil partners of each other and provides that both must sign the civil partnership schedule (“the schedule”).
121. Under the 2004 Act as enacted, one of the persons who must be present when the schedule is signed is the authorised registrar. The amendment made by subsection (2) (a) changes this so that it may be signed in the presence of the approved celebrant or the authorised registrar (whichever is the case). Once the couple have signed the schedule, it must also be signed by the witnesses and the person carrying out the ceremony. The amendment at subsection (2)(b) means that either the approved celebrant or the authorised registrar may sign the schedule.
122. The amendment at subsection (2)(a) also removes a reference to where the civil partnership may take place.
123. Subsection (3) makes a number of changes relating to the table of forbidden degrees. This is about people who are too closely related to each other to form a civil partnership. The opportunity has been taken to simplify the table of forbidden degrees. Subsection (2), explained below, substitutes a new Schedule 10 to the 2004 Act.
124. The amendment at subsection (3)(d) amends section 86(5) of the 2004 Act. Section 86(5) as enacted provides, in respect of people who have acquired a new gender, that references in the forbidden degrees to “former wife” includes “former husband” and references to “former husband” includes “former wife”.
125. The amendment at subsection (3)(d)(i) amends section 86(5) so that it refers to the definition of “spouse” as added by subsection (3)(c). The amendment at subsection 3(d) (ii) removes the word “former” from section 86(5). The word “former” is not needed in section 86(5) as the new Schedule 10 to the 2004 Act refers to “former spouse” and “spouse” is defined by the amendment at subsection (3)(c).
126. The amendment at subsection (3)(e) reflects the simplification of the table of forbidden degrees. The simplified table now refers to “parent” to cover both mothers and fathers: the amendment as subsection (3)(e)(i) reflects that drafting change. Subsection (3)(e) (ii) deletes a reference to “in either column” because the simplified table of forbidden degrees has one column.
127. The amendment at subsection (5) provides a definition of “district registrar” for the purposes of section 88 of the 2004 Act. Section 88 makes provision on information which intended civil partners must submit to the district registrar. The definition added at subsection (5) includes provision to cover cases where the civil partnership is to be registered in Scottish waters by an approved religious or belief celebrant.
128. The amendment at subsection (6) provides a definition of “district registrar” for the purposes of certain sections in the 2004 Act: section 89 itself (civil partnership notice book), section 90 (publicisation), section 91 (early registration), section 92 (objections to registration) and section 94 (the civil partnership schedule).
129. This definition is the same as the definition provided for section 88 except that where the civil partnership is to be registered in Scottish waters by an approved religious or belief celebrant, the district registrar is defined as the district registrar to whom the civil partnership notices were submitted (under section 88).
130. Subsection (7) amends section 90 of the 2004 Act. When publicising information about a forthcoming civil partnership, the district registrar and the Registrar General must provide the date when it is intended to register the civil partnership. The amendment makes this date more than 28 days after publicising the information rather than more than 14 days.

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131. Section 91 of the 2004 Act allows for early registration of a civil partnership. Subsection (8) amends a reference in section 91 from an authorised registrar to district registrar. A definition of “the district registrar” is inserted into the 2004 Act by subsection (5). Subsection (8) also changes the 14 day period in section 91 to 28 days, in line with the change made by subsection (7).
132. Subsection (8)(c) also amends section 91 so that it is clear that a request for early registration can be made electronically. The amendment creates an equivalent provision to section 6 of the 1977 Act.
133. Subsection (9) makes a number of amendments to section 92 of the 2004 Act, on objections to the proposed registration of a civil partnership.
134. The amendment at subsection (9)(a) makes it clear that the office where any person claiming to have reason to object to a proposed civil partnership can inspect the relevant entry in the civil partnership book is the office of the district registrar (as defined).
135. The amendment at subsection (9)(b)(i) is a consequential amendment required for the substantive amendment at subsection (9)(b)(ii). This amendment relates to a case where the district registrar has received an objection to a civil partnership which is more significant than just a misdescription or inaccuracy in a notice.
136. The new provision requires the district registrar, if the civil partnership schedule has already been issued and the civil partnership is to be registered by an approved religious or belief celebrant, to notify, if possible, the celebrant of the objection and advise the celebrant not to register the civil partnership pending consideration of the objection. This is on similar lines to equivalent provision in section 5 of the 1977 Act, on objections to marriage.
137. The amendment at subsection (9)(c) reflects the changes made by the Act so that registration of civil partnerships may be through a religious or belief celebrant.
138. Section 92(5)(a) of the 2004 Act as enacted provides that if the Registrar General is satisfied, after considering an objection, that there is a legal impediment to registering a civil partnership, the Registrar General has to direct the district registrar not to register the intended civil partners and to notify them accordingly. The amendment at subsection (9)(c) amends this so that the Registrar General, once satisfied that there is a legal impediment to registering a civil partnership has “to take all reasonable steps to ensure that the registration of the civil partnership does not take place and must notify, or direct the district registrar to notify, the intended civil partners”.
139. Subsection (10) amends section 93 of the 2004 Act so that it only covers cases where the civil partnership is being registered through a civil ceremony.
140. Subsection (10)(a)(ii) makes provision on where a civil ceremony may take place. It may take place at:
  - the registration office of the authorised registrar;
  - an appropriate place in the registration district of the authorised registrar (“appropriate place” is defined through the next set of amendments);
  - with the approval of the Registrar General, the registration office of another authorised registrar;
  - with the approval of the Registrar General, an appropriate place in the registration district of another authorised registrar; or
  - an appropriate place in Scottish waters.
141. Subsection (10)(b) provides definitions of “appropriate place”, “local registration authority” and “religious premises”. “Appropriate place” excludes “religious premises” which ensures that civil ceremonies to register civil partnerships cannot take place



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in religious premises. Similar definitions are inserted into the 1977 Act in relation to marriage by section 21 of this Act.

142. Subsection (10)(c) repeals sections 93(2) and (3) of the 2004 Act. These are now unnecessary. Section 93(2) made provision on civil partnerships taking place outwith the authorised registrar's district. This is now covered by the provision outlined above on where a civil ceremony may take place.
143. Section 93(3) of the 2004 Act made provision which banned civil partnerships from taking place in religious premises. The ban on civil ceremonies to register civil partnerships taking place in religious premises remains in place, as outlined above. Subsequent provision is made to establish religious and belief ceremonies to register civil partnerships. Such ceremonies may take place in religious premises.
144. Subsection (11) adds section 93A to the 2004 Act, on the date and place of religious or belief registration of civil partnerships. The procedures outlined in section 93A are in line with procedures contained in section 6 of the 1977 Act, in relation to the solemnisation of marriage.
145. Under section 93A the civil partnership should be registered on the date and at the place specified in the schedule. If this cannot be done and a new date or place is fixed, the district registrar must issue a new schedule or amend the existing one or direct the religious or belief celebrant to amend it.
146. However, special procedures apply if the new date for registration is more than 3 months after the date specified in the original schedule or if the new place for registration is in a different registration district or is in Scottish waters instead of a registration district or is in a registration district instead of Scottish waters.
147. In these cases, the Registrar General may:
  - direct the district registrar to issue a new schedule;
  - direct the district registrar to amend the existing schedule or direct the religious or belief celebrant to amend it; or
  - direct the intended civil partners to send the district registrar a new notice of proposed civil partnership.
148. Subsection (12) amends section 94 of the 2004 Act which concerns the civil partnership schedule. These amendments reflect the introduction of religious and belief ceremonies to register civil partnerships and changes made to sections 90 and 91 by subsections (7) and (8) about the minimum time period between publicising a civil partnership and it taking place.
149. The amendment at subsection (12)(c) provides that where the civil partnership is to be registered by an approved religious or belief celebrant, the district registrar must issue the completed schedule to one or both of the intended civil partners. The district registrar must not issue the schedule more than seven days before the intended civil partnership, unless authorised to do so by the Registrar General. This provision is on similar lines to section 6(4)(b) of the 1977 Act, in relation to the Marriage Schedule.
150. Subsection (13) adds sections 94A, 94B, 94C, 94D and 94E to the 2004 Act. These provisions relate to who can register a civil partnership, including religious and belief celebrants, and are based on equivalent provisions in the 1977 Act, on who can solemnise marriage.
151. Section 94A makes provision on who can register civil partnerships.
152. Under section 94A(1), a civil partnership may be registered only by a person who is:
  - a celebrant of a religious or belief body prescribed by regulations or, not being a celebrant, is recognised by the body as entitled to register civil partnerships;

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- registered as a celebrant under section 94B of the 2004 Act;
  - temporarily authorised as a celebrant under section 94E;
  - a registrar.
153. Section 94A(2) provides that Ministers may only prescribe a religious or belief body if the body requests them to do so and Ministers are satisfied that the body meets the “qualifying requirements”. The “qualifying requirements” are set out in regulations made by the Scottish Ministers (see section 94A(5)). These regulations are subject to annulment in pursuance of a resolution of the Scottish Parliament (i.e. the negative procedure) by virtue of amendments made by subsection (20).
154. Section 94A(3) makes it clear that nothing in section 94A imposes a duty:
- on any religious or belief body to request to be prescribed;
  - on any such body to nominate members under section 94B to nominate members to register civil partnerships;
  - on any person to apply for temporary authorisation under section 94E to register civil partnerships;
  - on any approved celebrant for civil partnerships to register civil partnerships.
155. Section 94B(1) provides that a religious or belief body who has not been prescribed under the regulations may nominate members to the Registrar General so that they can register civil partnerships.
156. Section 94B(2) provides that the Registrar General must reject a nomination if the Registrar General considers that the nominating body is not a religious or belief body; or it already has sufficient members registered to meet its need; or it does not meet the “qualifying requirements” set out in regulations made by the Scottish Ministers; or the nominee is not a fit and proper person. These regulations are subject to annulment in pursuance of a resolution of the Parliament (i.e. negative parliamentary procedure) (section 24(20) of the Act refers).
157. When the Registrar General accepts a nomination, the Registrar General must, under section 94B(4)(a), determine the period during which the nominee can register civil partnerships. This period must not be more than 3 years but section 94B(5) makes it clear that the nominee may be put forward for a further period.
158. Section 94B(4)(b) allows the Registrar General to restrict the nominee to registering civil partnerships in specific areas or places. Section 94B(4)(c) allows the Registrar General to impose such other conditions as the Registrar General thinks fit.
159. When a nomination has been accepted, section 94B(6)(a) provides that the Registrar General must advise the body and the nominee accordingly, specifying the period during which the nominee can register civil partnerships and any conditions which have been imposed.
160. The Registrar General also has to enter the name of the body, the nominee and any other relevant particulars into a register open for public inspection at all reasonable times free of charge.
161. When a nomination is rejected, section 94B(6)(b) provides that the Registrar General must inform the nominating body in writing, giving reasons. Section 94B(7) makes it clear that this may be done electronically. Section 94B(8) gives the nominating body 28 days to appeal to the Scottish Ministers against a rejection.

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162. Section 94B(9) provides that on any such appeal the Scottish Ministers may confirm the rejection or direct the Registrar General to accept the nomination. Ministers have to inform the nominating body of their decision and give the reasons for the decision.
163. Section 94B (9) and (10) provides that the Scottish Ministers' decision is final except that if the reason given by Ministers for confirming the rejection of a nomination is that the nominating body is not a religious or belief body, the body may appeal to the Court of Session, within 42 days of receiving the Ministers' decision.
164. The appeal can seek the determination of the court that the body is a religious or belief body. Under section 94B(11), if the court determines that the body is a religious or belief body and that the only reason given by Ministers for confirming the rejection was that the body was not a religious or belief body, the Registrar General must then accept the nomination.
165. Section 94C of the 2004 Act makes provision on the removal from the register of a celebrant registered under section 94B. As well as provisions relating to the removal of a celebrant from the register, and on the procedures for doing so, provision is also made for appeals to the Scottish Ministers against decisions made by the Registrar General.
166. Section 94C(1) provides that the Registrar General may remove a person's name from the register when:
- the person has asked to be removed;
  - the body which nominated the person no longer wants the person to be registered;
  - the person, while registered as an approved celebrant, has been convicted of an offence under this Part of the Act;
  - the person has, for the purpose of profit or gain, been carrying on a business of registering civil partnerships;
  - the person is not a fit and proper person to register civil partnerships;
  - the person, for any other reason, should not be on the register.
167. Section 94C(2) to (7) makes provision on removals from the register on the grounds outlined in section 94(C)(1). The Registrar General must give the person at least 21 days' notice of the intention to remove the person from the register (subsection (2)); must specify the ground of removal; must ask the person to give reasons why the person should not be removed; and must consider any representations made. Where a person's name has been removed from the register, the person may then appeal to the Scottish Ministers within 28 days of receiving notice of the removal. After a notice is given under subsection (2), the person must not register a civil partnership until the person is restored to the register or the Registrar General decides not to remove the person from the register.
168. Section 94D makes provisions on alterations to the register of approved nominated celebrants maintained under section 94B. Provision is made that the body must notify the Registrar General when any of the events listed in section 94D occur and the Registrar General must then alter the register accordingly. The events in section 94D are:
- changes to the name or address of the religious or belief body;
  - amalgamation of the religious or belief body;
  - death of an approved celebrant;
  - any change of name, address or designation of an approved celebrant;
  - the cessation of an approved celebrant from exercising the relevant functions.

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169. Section 94E makes provision on the temporary authorisation of religious or belief celebrants to register civil partnerships. Under section 94E(1), the Registrar General may grant any member of a religious or belief body temporary written authorisation to register a specific civil partnership or partnerships or to register civil partnerships during a specific period. This authorisation may contain terms and conditions. Section 94E(5) makes it clear that the authorisation can be issued electronically.
170. However, the Registrar General may only grant such temporary written authorisation when the religious or belief body of which the person is a member meets the “qualifying requirements” (section 94E(2)). The “qualifying requirements” are defined at section 94E(4) as “such requirements as may be set out in regulations made by the Scottish Ministers”. In addition, authorisation under section 94E(1)(b), which relates to authorisation for a period of time, may only be granted if the religious or belief body of which the person is a member is prescribed by regulations made under section 94A, so that its celebrants are authorised to register civil partnerships, or has nominated persons under section 94B to register civil partnerships. (section 94E(3)). The above regulations are subject to annulment in pursuance of a resolution of the Parliament (i.e. negative parliamentary procedure) (section 24(20) of the Act refers).
171. Subsection (14) amends section 95 of the 2004 Act, on further provision as to the registration of civil partnerships including in relation to the civil partnership schedule.
172. The amendment at subsection (14)(a) reflects that with the introduction of religious or belief ceremonies, it may be an approved celebrant, rather than a registrar, who asks the intended civil partners to confirm that, to the best of their knowledge, the particulars set out in the schedule are correct.
173. The amendment at subsection (14)(b) inserts a new subsection into section 95 of the 2004 Act. This provision requires civil partners who have had a religious or belief ceremony to ensure that the signed schedule is delivered to the district registrar within 3 days. (This is in line with section 15(2) of the 1977 Act, on delivering the signed Marriage Schedule to the district registrar).
174. The new section 95(3A) of the 2004 Act provides that the district registrar must not enter the particulars set out in the schedule for a religious or belief civil partnership in the register, unless and until the district registrar receives a duly signed schedule.
175. The new section 95(3B) empowers the Registrar General to take steps if satisfied that a civil partnership has been properly registered and the schedule has been signed but then lost or destroyed. In these cases, the Registrar General may direct the district registrar to complete an exact copy of the schedule and, so far as practicable, arrange for it to be signed again by those who signed the original schedule. The new section 95(3C) provides that once the copy schedule has been signed, the district registrar must arrange for its particulars to be entered into the register.
176. Subsection (15) adds section 95ZA to the 2004 Act, on registrar’s power to require delivery of civil partnership schedule. This new provision is in line with section 16 of the 1977 Act, on a registrar’s power to require delivery of marriage schedule.
177. Under the new provision, if the district registrar does not receive the schedule within 21 days from the date of registration, the district registrar may serve a notice in the prescribed form on either of the civil partners requiring that the schedule be delivered or sent through the post to the registrar within 8 days. If this notice is not complied with, the district registrar may serve a second notice in the prescribed form requiring the person to attend personally at the registration office within 8 days in order to deliver the schedule. Failure to comply with this second notice is a criminal offence (the offence is added by subsection (19)). Section 126 of the 2004 Act means that regulations prescribing forms under section 95ZA are subject to annulment in pursuance of a resolution of the Scottish Parliament (i.e. negative procedure).

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178. Subsection (17) relates to section 96, on civil partnership with former spouse. This follows a divorce on the grounds of the issue of an interim gender recognition certificate.
179. The amendment at (a) is a consequential change, reflecting the amendments to section 91 made by subsection (8), and the amendment at (b) is also a consequential change, reflecting the amendments made to section 94 by subsection (12). (The amendments made by subsection (12) are explained at paragraphs 148 and 149).
180. The amendments at subsection (18) relate to section 97 of the 2004 Act, on the issue of a certificate of no impediment where two people propose to enter into a civil partnership in England and Wales but one of them resides in Scotland. The first amendment changes the period in which the certificate should normally be issued from no earlier than 14 days to no earlier than 28 days. Section 97(5) of the 2004 Act makes provisions for objections in writing to the district registrar against the issue of a certificate. The second amendment makes it clear that any such objection may be submitted electronically.
181. Subsection (19) makes provision in respect of criminal offences and does so by amending section 100 of the 2004 Act.
182. The amendment at (a)(i) extends three offences which currently only apply to authorised registrars (or persons pretending to be authorised registrars) to approved celebrants (or persons pretending to be approved celebrants).
183. Following the amendments, the offences now relates to a person who knowingly:
- “being an approved celebrant or, as the case may be, an authorised registrar, purports to register two people as civil partners of each other before any civil partnership schedule available to him at the time of registration has been duly completed”;
  - “not being an approved celebrant or, as the case may be, an authorised registrar, conducts himself in such a way as to lead intended civil partners to believe that he is authorised to register them as civil partners of each other ”;
  - “being an approved celebrant or, as the case may be, an authorised registrar, purports to register two people as civil partners of each other without both of them being present”.
184. The amendment at (a)(ii) reflects changes to section 93 on place of civil registration of civil partnerships.
185. The amendments at (b) relate to new offences created as a result of the introduction of religious and belief ceremonies and to the penalty when found guilty of one of these new offences. The penalty on summary conviction is a fine not exceeding level 3 on the standard scale.
186. The offences created by (b) are:
- an approved celebrant registering a civil partnership in an area or place where the celebrant is not permitted to register a civil partnership;
  - an approved celebrant registering a civil partnership after a notice has been served by the Registrar General indicating that the Registrar General intends to remove the person’s name from the register;
  - a celebrant approved on a temporary basis registering a civil partnership not specified in the authorisation;
  - a celebrant approved on a temporary basis registering a civil partnership outwith the period specified in the authorisation;
  - a celebrant approved on a temporary basis registering a civil partnership contrary to any terms and conditions specified in the authorisation;

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- a party to a civil partnership failing to comply with a second notice from the district registrar, requiring the party to appear personally at the registration office to deliver the schedule.
187. The amendment at (c) is a consequential amendment to section 100(4) of the 2004 Act, reflecting the new offences created by (b). Section 100(4) provides that summary proceedings for an offence under section 100 may be commenced within 3 months after sufficient evidence comes to the Lord Advocate’s knowledge or within 12 months after the offence is committed (whichever period last expires).
188. Subsection (20) provides that the new powers to make regulations in respect of prescribing religious or belief bodies whose celebrants are authorised to register civil partnerships on the “qualifying requirements” (for religious and belief bodies to meet) are subject to annulment in pursuance of a resolution of the Parliament (i.e. the negative procedure).
189. Subsection (21) adds definitions to Part 3 of the 2004 Act relating to civil partnerships in Scotland.
190. Subsection (22) introduces a new Schedule 10 to the 2004 Act, replacing the current Schedule. The new Schedule 10 is a simplified version of the existing table of forbidden degrees. No changes are made in respect of the types of relationships which mean that a couple cannot enter into a civil partnership. Instead, the change relates to how the relationships are described. The table below demonstrates this:

*TABLE OF FORBIDDEN DEGREES*

<i>Previous table (Column 1)</i>	<i>Previous table (Column 2)</i>	<i>New table</i>
<b><i>Relationships by consanguinity</i></b>		
Father	Mother	Parent
Son	Daughter	Child
Father’s father	Father’s mother	Grandparent
Mother’s father	Mother’s mother	Grandparent
Son’s son	Son’s daughter	Grandchild
Daughter’s son	Daughter’s daughter	Grandchild
Brother	Sister	Sibling
Father’s brother	Father’s sister	Aunt or uncle
Mother’s brother	Mother’s sister	Aunt or uncle
Brother’s son	Brother’s daughter	Niece or nephew
Sister’s son	Sister’s daughter	Niece or nephew
Father’s father’s father	Father’s father’s mother	Great-grandparent
Father’s mother’s father	Father’s mother’s mother	Great-grandparent
Mother’s mother’s father	Mother’s father’s mother	Great-grandparent
Mother’s mother’s father	Mother’s mother’s mother	Great-grandparent
Son’s son’s son	Son’s son’s daughter	Great-grandchild
Son’s daughter’s son	Son’s daughter’s daughter	Great-grandchild
Daughter’s son son	Daughter’s son’s daughter	Great-grandchild

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<i>Previous table (Column 1)</i>	<i>Previous table (Column 2)</i>	<i>New table</i>
Daughter's daughter's son	Daughter's son daughter	Great-grandchild
<b><i>Relationships by affinity referred to in section 86(3)</i></b>		
Son of former wife	Daughter of former husband	Child of former spouse
Son of former civil partner	Daughter of former civil partner	Child of former civil partner
Former husband of mother	Former wife of father	Former spouse of parent
Former civil partner of father	Former civil partner of mother	Former civil partner of parent
Former husband of father's mother	Former wife of father's father	Former spouse of grandparent
Former civil partner of father's father	Former civil partner of father's mother	Former civil partner of grandparent
Former husband of mother's mother	Former wife of mother's father	Former spouse of grandparent
Former civil partner of mother's father	Former civil partner of mother's mother	Former civil partner of grandparent
Son of son of former wife	Daughter of son of former husband	Grandchild of former spouse
Son of son of former civil partner	Daughter of son of former civil partner	Grandchild of former civil partner
Son of daughter of former wife	Daughter of daughter of former husband	Grandchild of former spouse
Son of daughter of former civil partner	Daughter of daughter of former civil partner	Grandchild of former civil partner

***Section 25: Power of district registrar to require evidence of nationality: civil partnership***

191. This section adds provisions to section 88 of the 2004 Act.
192. Section 88 of the 2004 Act makes provision about the documents which people wishing to enter into a civil partnership have to supply to the district registrar.
193. The new section 88(8) provides that a district registrar may require “specified nationality evidence” in relation to the intended civil partners. The new section 88(9) outlines when such evidence may be requested. The new section 88(10) defines “specified nationality evidence” in terms of guidance that the Registrar General may issue.
194. [Section 17](#) of this Act adds similar provision to the 1977 Act, in relation to opposite sex and same sex marriage.

***Section 26: Recognition of overseas relationships***

195. [Sections 212 to 218](#) of, and [Schedule 20](#) to, the 2004 Act makes provision on the recognition in the UK as civil partnerships of overseas same sex registered relationships. Such relationships can be recognised in the UK either by meeting general conditions laid down in section 214 of the 2004 Act or by being specified in [Schedule 20](#). UK

Ministers have the power to amend Schedule 20, with the consent of the Scottish Ministers and the Northern Ireland Department of Finance and Personnel.

196. Currently, both overseas same sex marriages and overseas same sex civil unions are recognised in the UK as civil partnerships, so long as they meet the provisions outlined above. Section 26 makes amendments so that, in future, these arrangements only relate to overseas same sex civil unions.
197. Overseas same sex marriages will, in future, be recognised in Scotland as marriages. Section 38 of the Family Law (Scotland) Act 2006 already makes provision on the formal validity of overseas marriages and marriages from elsewhere in the UK. Section 4 of this Act makes provision so that references to “marriage” in enactments commenced before this Act means both opposite sex and same sex marriage.

### ***Section 27: Dissolution of civil partnership: evidence***

198. [The Evidence in Civil Partnership and Divorce Actions \(Scotland\) Order 2012 \(SSI 2012/111\)](#)<sup>1</sup> removed the need for third party evidence in actions to dissolve civil partnerships using the simplified procedure. (The simplified procedure can generally be used where there is no dispute about financial matters and no children under 16).<sup>2</sup>
199. Some civil partnerships were dissolved using the simplified procedure and without obtaining third party evidence before the Order came into effect. Section 27 provides that the Order is to be treated as having had effect since 5 December 2005 (when civil partnerships were introduced). The effect of the provision is that decrees of dissolution granted before the Order took effect cannot be challenged on the grounds that no third party evidence was provided.

## **Part 3 – Marriage and civil partnership: other provision**

### ***Section 28: Bigamy***

200. Subsection (1) makes bigamy a statutory offence in relation to both opposite sex and same sex marriage. Subsection (3) abolishes the current common law offence.
201. Subsection (1) amends section 24 of the 1977 Act, on offences, and makes it an offence for a person to purport to enter into a marriage with another person knowing that one or both of them is already in a marriage or civil partnership with somebody else.
202. Subsection (1) provides for the penalties on conviction for bigamy. On conviction on indictment, a person is liable to a maximum of two years in prison or an unlimited fine or both. On summary conviction, a person is liable to a maximum of 12 months in prison or a fine not exceeding the statutory maximum (currently £10,000) or both.
203. Subsection (1) also corrects an existing reference in section 24(1)(ii) of the 1977 Act. The term “prescribed sum” is now out of date and has been replaced in most legislation with “statutory maximum”. A similar amendment is made here, clarifying the penalties which may be imposed following summary conviction in relation to the existing offences in section 24(1) of the 1977 Act.
204. Subsection (2) makes two amendments to the offence provisions at section 100 of the 2004 Act.
205. The first amendment changes an offence from “registers” a civil partnership to “purports to register”. This reflects that under section 86(1)(d) of the 2004 Act two people are not eligible to register a civil partnership if one or either of them is married or already in a civil partnership.

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<sup>1</sup> This Order can be found at <http://www.legislation.gov.uk/ssi/2012/111/contents/made>

<sup>2</sup> More information on the simplified procedure is at <http://www.scotcourts.gov.uk/taking-action/divorce-and-dissolution-of-civil-partnership>



206. The second amendment made by subsection (2) updates a reference to penalties on summary conviction so that section 100(3)(b) of the 2004 Act refers to the statutory maximum rather than level 3 on the standard scale.
207. Subsection (4) amends the Presumption of Death (Scotland) Act 1977 to reflect the introduction of a statutory offence of bigamy under new section 24(A1) and to take account of the offence at section 100 of the 2004 Act of entering into a civil partnership while married or already in a civil partnership. The Presumption of Death (Scotland) Act 1977 contains a defence to the common law offence of bigamy if for seven years the person had no reason to believe the person's spouse was alive. In future, this defence will reflect that bigamy will be a statutory offence and will refer instead to the offence at section 100 of the 2004 Act.

#### **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));
  - 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));

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- 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.

## **Part 5 – Registration services**

### ***Section 32: Provision of certain information to district registrars***

216. This corrects an erroneous cross-reference. Section 39C(1)(a)(i) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 currently refers to “the registers of births, deaths and marriages transmitted to the Registrar General under section 34(3) of this Act”. This reference should be to section 34(4) of the 1965 Act which provides that “The district registrar for a registration district shall, at such time or times as the Registrar General may direct, transmit a relevant register to the Registrar General”. Section 32 provides the correct cross-reference.

### ***Section 33: Form of register of marriages***

217. Section 54 of the 1965 Act empowers the Registrar General, with the approval of Scottish Ministers, to make regulations on matters such as the form of registers for births, marriages and deaths. Section 33 amends section 54 of the 1965 Act so that regulations prescribing the form of a register of marriages may make different provision for different circumstances. Different descriptions may be needed for the parties of a same sex marriage when compared with parties to an opposite sex marriage.

## **Part 6 – General provisions**

### ***Section 35: Ancillary provision***

218. This section allows Ministers to make ancillary provision, by order. Generally, such an order is subject to negative procedure but any order containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.