

## **POLICY NOTE**

### **THE MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 1) ORDER 2014**

#### **SSI 2014/121 (C. 8)**

The powers to make this Order are conferred by section 36 of the Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”).

#### **Policy Objectives**

The Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”) introduces same sex marriage; makes other changes to marriage law; introduces the religious and belief registration of civil partnership; and allows transgender people to stay married and obtain a full gender recognition certificate.

To implement the 2014 Act, Scottish Ministers need to make various secondary legislation, with the aim to have all the necessary Scottish Statutory Instruments in place by the end of 2014. Accordingly to start this implementation process, the following provisions of the 2014 Act will come into force on 21 May 2014 as a consequence of this Order:

- Section 7. (This section repeals the defence for wives against the crime of reset, the crime of possessing goods stolen by another. The common law defence to the crime is abolished where the person accused of reset is the wife, and the goods were stolen by her husband. The repeal of the defence to the crime of reset is abolished the day after the provision is brought into force.)
- Section 19. (This section amends section 7 of the Marriage (Scotland) Act 1977 (“the 1977 Act”). The effect of the amendment is that where a person wants to marry outwith Scotland and seeks a certificate about his or her 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. (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 22. (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. Section 20 of the 1977 Act sets out the process for a second marriage ceremony and provides for an endorsement to be made to the marriage schedule by the authorised registrar. The amendment made by section 22 repeals the wording of the endorsement which refers to years starting “19”.)

- Section 23. (This section clarifies the jurisdiction of the sheriff court in relation to declarators of marriage and makes provision on the jurisdiction of the Scottish courts in relation to same sex matrimonial court actions, including declarators of marriage.)
- Section 27. (This section provides that civil partnerships dissolved using the simplified procedure and without obtaining third party evidence are to be treated as having had effect since 5 December 2005, the date when civil partnership was introduced.)
- Section 32. (This section corrects an erroneous cross-reference to section 34(4) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 rather than section 34(3).)

## **Consultation**

Between 2 September and 9 December 2011, the Scottish Government consulted on the registration of civil partnership and same sex marriage:

<http://www.scotland.gov.uk/Publications/2011/09/05153328/0>.

The Scottish Government then consulted on the draft Marriage and Civil Partnership (Scotland) Bill from 12 December 2012 until 20 March 2013:

<http://www.scotland.gov.uk/Publications/2012/12/9433>.

## **Impact Assessments**

No impact assessments were prepared for this commencement order. However, the Scottish Government prepared a Business and Regulatory Impact Assessment,

<http://www.scotland.gov.uk/Resource/0042/00426362.pdf>, and an Equality Impact Assessment,

<http://www.scotland.gov.uk/Resource/0042/00426363.pdf>, for the Bill's introduction to the Scottish Parliament on 26 June 2013. Explanatory Notes and other accompanying documents, including a Financial Memorandum, were also produced:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/64983.aspx>.

**Civil Law and Legal System Division**  
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