

POLICY NOTE

THE GENDER RECOGNITION (MARRIAGE AND CIVIL PARTNERSHIP REGISTRATION) (MODIFICATION) (SCOTLAND) ORDER 2016

SSI 2016/67

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 23(1) and 24(1) of the Gender Recognition Act 2004 (“the 2004 Act”). The instrument is subject to the negative procedure.

Policy Objectives

The Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”) made a number of changes to marriage and civil partnership law, including the introduction of same sex marriage. The 2014 Act made some amendments to the 2004 Act to reflect the introduction of same sex marriage, including provision so that persons in a marriage solemnised in Scotland¹ can obtain a full Gender Recognition Certificate (“GRC”) and stay married. A full GRC provides full legal recognition of an acquired gender.

The 2014 Act also amended the 2004 Act so that where a couple in a civil partnership registered in Scotland² both obtain a full GRC on the same day, they can remain in the civil partnership. Where only one party in a civil partnership is obtaining a full GRC, provision is made so that the civil partnership can be changed into a marriage, thus enabling the couple to stay in a legally recognised relationship. It is not possible for a couple in a civil partnership to remain in the civil partnership where only one of the parties is obtaining a full GRC, as there is no legal status of mixed sex civil partnership in Scotland.

The 2014 Act added paragraph 20A to Schedule 3 to the 2004 Act to enable the Registrar General, with the approval of the Scottish Ministers, to make regulations about the registration of marriages and civil partnerships following gender recognition. The Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Regulations 2016 make appropriate provision accordingly for a new entry in the marriage or civil partnership register reflecting the name(s) and gender(s) on the full GRC(s) obtained by the party or parties to the marriage or civil partnership.

This Order makes provision in respect of existing marriage and civil partnership entries for the couple. The aim is to reduce the risk of one or both of the couple being “outed” as transgender, which might occur if the existing marriage or civil partnership entry and the new marriage or civil partnership entry were to be compared.

¹ Including marriages by UK consuls and UK armed forces overseas where the couple elected Scotland as the relevant part of the UK and details of the marriage are held by the Registrar General of Births, Deaths and Marriages for Scotland.

² Including civil partnerships registered outwith the UK by the UK consular service and the UK armed forces where the couple elected Scotland as the relevant part of the UK and details of the civil partnership are held by the Registrar General of Births, Deaths and Marriages for Scotland.

Background

Article 3 modifies the operation of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (“the 1965 Act”). Under the 1965 Act, the marriage register is open to public inspection and search. Article 3 modifies the operation of the relevant provisions so the existing marriage register entry for the couple is not open to public inspection and search. In particular:

- As the alphabetical index of the marriage register is available for search by the public under section 38(1) of the 1965 Act, article 3(2) provides that the existing entry in the marriage register is no longer indexed.
- Article 3(3) provides that the alphabetical index which the registrar can access under section 39C should no longer include the existing entry.
- As extracts of entries in the marriage register may be obtained by the public, article 3(4) provides that extracts of the existing entry must not be issued, except to one of the parties to the marriage.
- Article 3(5) and (6) provides that a hidden link should be established between the existing entry and the new entry. This is in line with current practice in relation to birth register entries following gender recognition. Article 3(7) and (8) provide that information about the link may be disclosed by the Registrar General only following a court order or to one of the parties to the marriage.
- Section 41A of the 1965 Act provides that an extract of an entry in the marriage register is sufficient evidence of the marriage to which it relates. Under the Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Regulations 2016, not all of the particulars in the new entry may be the same as on the existing entry. Article 3(9) provides that an extract of the new entry is only evidence of the marriage where it reflects the existing entry relating to the couple.
- Article 4 makes equivalent provision in respect of the civil partnership register for civil partnerships where both civil partners have obtained a full GRC.

Consultation

In preparing this Order, the Scottish Government has consulted the Registrar General, the Equality Network and the Scottish Transgender Alliance.

Impact Assessments

No impact assessments were prepared for this Order. However, the Scottish Government prepared an Equality Impact Assessment³ (“EQIA”) for the introduction of the Bill which led to the 2014 Act to Parliament on 26 June 2013. This EQIA noted the benefits of the legislation to transgender people.

Financial Effects

There will be costs to National Records of Scotland. However, these costs are expected to be low.

³ <http://www.scotland.gov.uk/Topics/Justice/law/17867/samesex/EQIA>

**Scottish Government
Justice Directorate
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