

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 1 – Marriage

Chapter 1 – Same sex 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

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

the same sex living together as if married and the reference to living together as if civil partners ceases to have effect.

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.