

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY

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 The term “prescribed sum” is now out of date and has been replaced in most legislation with “statutory maximum”.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.
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.