

# Marriage and Civil Partnership (Scotland) Act 2014

2014 asp 5

## PART 1

### MARRIAGE

#### CHAPTER 1

##### SAME SEX MARRIAGE

#### **1 Marriage of related persons**

(1) The Marriage (Scotland) Act 1977 (“the 1977 Act”) is amended as follows.

(2) In section 2 (marriage of related persons)—

(a) for subsection (1) substitute—

“(1) Subject to subsection (1A), a marriage between persons who are related to each other in a forbidden degree is void if solemnised—

(a) in Scotland; or

(b) at a time when either party is domiciled in Scotland.

(1ZA) For the purposes of subsection (1), a person is related to another person in a forbidden degree if related to that person in a degree specified in Schedule 1.”

(b) in subsection (1A), for the words from the beginning to “paragraph,” substitute “A person who is related to another person in a degree specified in paragraph 2 of Schedule 1 (relationships by affinity) is not related to that person in a forbidden degree”;

(c) after subsection (1A) insert—

“(1C) For the purposes of paragraph 2 of Schedule 1, “spouse” means—

(a) in the case of a marriage between persons of different sexes, a wife in relation to her husband or a husband in relation to his wife; and

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- (b) in the case of a marriage between persons of the same sex, one of the parties to the marriage in relation to the other.”,
  - (d) in subsection (7)—
    - (i) for “those provisions” substitute “subsection (1C)(a) as it applies to paragraph 2 of Schedule 1”, and
    - (ii) the word “former” in each place where it appears is repealed, and
  - (e) in subsection (7A)—
    - (i) for “mother” substitute “parent”, and
    - (ii) the words “in either column” are repealed.
- (3) For schedule 1 substitute—

“SCHEDULE 1

*(introduced by section 2)*

DEGREES OF RELATIONSHIP

1. ***Relationships by consanguinity***
  - Parent
  - Child
  - Grandparent
  - Grandchild
  - Sibling
  - Aunt or uncle
  - Niece or nephew
  - Great-grandparent
  - Great-grandchild
2. ***Relationships by affinity referred to in section 2(1A)***
  - Child of former spouse
  - Child of former civil partner
  - Former spouse of parent
  - Former civil partner of parent
  - Former spouse of grandparent
  - Former civil partner of grandparent
  - Grandchild of former spouse
  - Grandchild of former civil partner
3. ***Relationships by adoption***
  - Adoptive parent or former adoptive parent
  - Adopted child or former adopted child.”.

**2 Objections to marriage**

In section 5(4) of the 1977 Act (objections to marriage)—

- (a) paragraph (e) is repealed, and
- (b) in paragraph (f), for “than one mentioned in paragraphs (a) to (e) above,” substitute “than—
  - (i) one mentioned in paragraphs (a) to (d) above; or

(ii) the ground that the parties are of the same sex.”.

### **3 Preliminaries to marriage**

- (1) The 1977 Act is amended as follows.
- (2) In section 3 (notice of intention to marry)—
  - (a) in subsection (1)—
    - (i) for paragraph (b) substitute—

“(b) if the person has previously been married and the marriage ended on the death of the other party to that marriage, the death certificate of that other party;”,
    - (ii) after that paragraph insert—

“(ba) if the person has previously been in a civil partnership which ended on the death of the other party to the civil partnership, the death certificate of that other party;”,
  - (b) in subsection (2), for “or (b)” substitute “, (b), (ba) or (bb)”, and
  - (c) in subsection (5), after paragraph (ii)(b) of the proviso insert “; or
  - (c) if no such certificate has been issued only by reason of the fact that the parties to the intended marriage are of the same sex.”.
- (3) In section 7(1) (marriage outside Scotland where a party resides in Scotland), after “(b)” insert “, (ba), (bb)”.

### **4 Meaning of marriage and related expressions in enactments and documents**

- (1) References (however expressed) in any enactment to—
  - (a) marriage (including a marriage that has ended),
  - (b) a person who is (or was) married to another person, and
  - (c) two people who are (or were) married to each other,are references to marriage whether between persons of different sexes or persons of the same sex and to a party (or former party), or as the case may be the parties (or former parties), to such a marriage.
- (2) Subsection (3) applies to references (however expressed) in any enactment to two people who—
  - (a) are (or were) not married to each other, but
  - (b) are (or were) living together as if they were husband and wife.
- (3) The references include two people of the same sex who are (or were) not married to, nor in civil partnership with, each other but who are (or were) living together as if they were married to each other.
- (4) References (however expressed) in any enactment to two people of the same sex who are (or were) living together as if they were in a civil partnership cease to have effect.
- (5) Subsections (1) to (4)—
  - (a) apply to enactments (other than private Acts) passed or made before the commencement of this section, and

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- (b) do not apply in so far as the enactment, or any other enactment, provides otherwise.
- (6) In so far as being (or having been) married or in a purported marriage is relevant for the operation of any rule of law, the rule of law applies equally in relation to marriage or purported marriage to a person of a different sex and marriage or purported marriage to a person of the same sex.
- (7) Subsections (1) to (6) are subject to an order under subsection (8).
- (8) The Scottish Ministers may by order provide for any of subsections (1) to (6)—
- (a) to have effect subject to provision made by the order, or
  - (b) not to apply in cases specified in the order.
- (9) An order under subsection (8)—
- (a) may make different provision for different purposes,
  - (b) may include consequential, supplementary, incidental, transitional, transitory or saving provision,
  - (c) may modify any enactment (including this Act),
  - (d) is (except where subsection (10) applies) subject to the negative procedure.
- (10) An order under subsection (8) which adds to, replaces or omits any part of the text of an Act is subject to the affirmative procedure.
- (11) References (however expressed) in any document to—
- (a) marriage (including a marriage that has ended),
  - (b) a person who is (or was) married to another person, and
  - (c) two people who are (or were) married to each other,
- are references to marriage whether between persons of different sexes or persons of the same sex and to a party (or former party), or as the case may be the parties (or former parties), to such a marriage.
- (12) The following expressions in any document have the meanings given—
- (a) “widow” includes a woman whose marriage to another woman ended with the other woman’s death,
  - (b) “widower” includes a man whose marriage to another man ended with the other man’s death.
- (13) Subsections (11) and (12)—
- (a) apply to documents executed on or after the commencement of this section, and
  - (b) do not apply in so far as the document provides otherwise.
- (14) In section 26(2) of the 1977 Act (interpretation), after the definition of “authorised registrar” insert—
- ““marriage” means marriage between persons of different sexes and marriage between persons of the same sex;”.
- (15) In schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010 (definitions of words and expressions), insert at the appropriate place in alphabetical order—
- ““marriage” means marriage between persons of different sexes and marriage between persons of the same sex (and any reference to a person being (or having

been) married to another person, or to two people being (or having been) married to each other, is to be read accordingly),”

““widow” includes a woman whose marriage to another woman ended with the other woman’s death,”

““widower” includes a man whose marriage to another man ended with the other man’s death,”.

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

(1) For the avoidance of doubt, the rule of law which provides for a marriage to be voidable by reason of impotence has effect only in relation to a marriage between persons of different sexes.

(2) In section 1 of the Divorce (Scotland) Act 1976 (grounds of divorce), after subsection (3) insert—

“(3A) For the avoidance of doubt, in relation to marriage between persons of the same sex, adultery has the same meaning as it has in relation to marriage between persons of different sexes.”.

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

Schedule 1, which makes provision about jurisdiction in proceedings relating to same sex marriages, has effect.

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

(1) Any rule of law under which a wife who receives or conceals goods stolen by her husband does not commit the offence of reset ceases to apply.

(2) Subsection (1) applies only in relation to things done after the day on which this section comes into force.