

# MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014

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## EXPLANATORY NOTES

### SCHEDULES

#### *Schedule 1: Jurisdiction in proceedings relating to same sex marriages*

##### Overview

219. The Domicile and Matrimonial Proceedings Act 1973 (“the 1973 Act”) makes provision on the jurisdiction of the Scottish courts to deal with court actions on divorce, separation, declarator of nullity of marriage and declarator of marriage and on actions for declarator of recognition or non-recognition of relevant foreign decrees. The 1973 Act has been amended previously to take account of EC Regulation 2201/2003 (known as Brussels IIa) on jurisdiction, recognition and enforcement of judgments in matrimonial matters and in the matters of parental responsibility. EC Regulation 2201/2003 deals with opposite sex marriage only.
220. [Schedule 1](#) makes provision on the jurisdiction of the Scottish courts in relation to same sex marriages. The schedule amends the 1973 Act to make provision for court actions in relation to same sex couples. The schedule also enables the Scottish Ministers to make provision corresponding to EC Regulation 2201/2003.
221. In addition, overseas couples who enter into a same sex marriage in Scotland but remain or become habitually resident or domiciled in another country may not be able to end their marriage in that country if it does not recognise the existence of the relationship.
222. The schedule therefore amends the 1973 Act to provide a “jurisdiction of last resort” so that those same sex couples who are unable to divorce or obtain other matrimonial order in the country which would normally have jurisdiction are able have their case heard in the Scottish courts. The Scottish courts will be able to assume jurisdiction if the couple were married in Scotland and it is the interests of justice to do so.
223. Provision of a similar nature was made in respect of civil partnerships under Chapter 3 of Part 5 to the Civil Partnership Act 2004. Part 4 of Schedule 4 to the UK Marriage (Same Sex Couples) Act 2013 makes similar provision in respect of the jurisdiction of the courts in England and Wales in relation to matrimonial actions for same sex couples.

##### Domicile and Matrimonial Proceedings Act 1973

224. [Paragraph 1\(2\)](#) amends the 1973 Act to set out which provisions in respect of jurisdiction in matrimonial actions do not apply to marriages of same sex couples, which are instead dealt with in [Schedule 1B](#), inserted by [paragraph 1\(4\)](#). [Paragraph 1\(3\)](#) amends section 10 of the 1973 Act, to reflect that references to EC Regulation 2201/2003 are not relevant for same sex married couples, as the Regulation extends to opposite sex marriage only.

225. Paragraph 1(4) inserts a new Schedule 1B into the 1973 Act. Paragraph 1 of the new Schedule 1B sets out that the Schedule has effect with respect to the jurisdiction of the court to entertain proceedings relating to the ending of a same sex marriage (divorce, separation, nullity) and proceedings relating to a marriage's validity, including whether or not the marriage exists. The paragraph also provides definitions.

### **Power to make provision corresponding to EC Regulation 2201/2003**

226. Paragraph 2(1)(a) of Schedule 1B enables the Scottish Ministers to make regulations about the jurisdiction of the courts in relevant proceedings in relation to a same sex marriage. "Relevant proceedings" are defined in paragraph 1(2) of Schedule 1B with reference to the proceedings listed in paragraph 1(1): divorce; separation; declarator of marriage; declarator of nullity of marriage and declarator of recognition, or non-recognition, of a decree of divorce, separation or nullity granted outwith a Member State of the EU. Paragraph 2(1)(b) allows the Scottish Ministers to make regulations to provide for the recognition in Scotland of a judgment by a court of another Member State relating to divorce, separation or annulment.
227. The regulations under paragraph 2(1) would apply where one of the couple: is or has been habitually resident in a Member State), or is an EU national, or is domiciled in a part of the UK or the Republic of Ireland. The regulations may correspond with the terms of EC Regulation 2201/2003 on jurisdiction, recognition and enforcement of judgments in matrimonial matters.
228. The provisions in regulations made under paragraph 2(1)(b) on recognition of judgments can apply retrospectively – i.e. where the date of the divorce is earlier than the date on which the paragraph comes into force.
229. A statutory instrument containing these regulations will be subject to the affirmative procedure.

### **Divorce or separation**

230. Paragraph 3(1) of Schedule 1B provides that the Court of Session is able to deal with divorce or separation cases relating to same sex marriage either (a) where the Scottish courts have jurisdiction because of regulations made under paragraph 2 of the Schedule or (b) when no court has jurisdiction under the regulations and either of the married same sex couple is domiciled in Scotland when the case starts.
231. Under paragraph 3(2), the sheriff court has jurisdiction in these cases when either (a) or (b) above is met and:
- either party to the marriage was resident in the sheriffdom for a period of 40 days before the court action is raised; or
  - either party had been resident in the sheriffdom for at least 40 days ending not more than 40 days before the court action is raised and has no known residence in Scotland when the action is raised.
232. In addition, Edinburgh sheriff court has jurisdiction if the couple married in Scotland, no court has jurisdiction under regulations made under paragraph 2 of Schedule 1B and it appears to the court to be in the interests of justice for it to deal with the case. This is referred to in paragraph 222 above as "jurisdiction of last resort".

### **Declarator of marriage**

233. Paragraph 4(1) of Schedule 1B provides that the Court of Session is able to deal with declarator of marriage cases relating to same sex marriage either where either of the parties is (a) domiciled in Scotland when the action is raised or (b) habitually resident in Scotland for a year before the action is raised or (c) dead and at death was domiciled in

Scotland or had been habitually resident in Scotland for a year immediately preceding the death.

234. Under paragraph 4(2), the sheriff court has jurisdiction in these cases when either (a) or (b) or (c) above is met and either party to the marriage:
- was resident in the sheriffdom for a period of 40 days before the court action is raised; or
  - had been resident in the sheriffdom for at least 40 days ending not more than 40 days before the court action is raised and has no known residence in Scotland when the action is raised.

### **Nullity of marriage**

235. Paragraph 5(1) of Schedule 1B provides that the Court of Session is able to deal with declarators of nullity of a same marriage where (a) the Scottish courts have jurisdiction under regulations made under paragraph 2 of Schedule 1B or (b) no court has jurisdiction under the regulations and either party to the marriage is (i) domiciled in Scotland when the action is raised or (ii) dead and at death had been domiciled in Scotland or had been habitually resident in Scotland for a year immediately preceding the death.
236. Under paragraph 5(2), the sheriff court has jurisdiction in these cases when either (a) or (b) above is met and either party to the marriage:
- was resident in the sheriffdom for a period of 40 days before the court action is raised; or
  - had been resident in the sheriffdom for at least 40 days ending not more than 40 days before the court action is raised and has no known residence in Scotland when the action is raised.
237. In addition, Edinburgh sheriff court has jurisdiction if the couple married in Scotland, no court has jurisdiction under regulations made under paragraph 2 of Schedule 1B and it appears to the court in the interests of justice for it to deal with the case. This is referred to in paragraph 222 above as “jurisdiction of last resort”.

### **Recognition, or non-recognition, of foreign decrees**

238. Paragraph 6(1) of Schedule 1B provides that the Court of Session is able to deal with proceedings to recognise or not recognise a court decree from outwith the EU relating to divorce, separation or nullity of a same sex marriage if (a) the Scottish courts have jurisdiction under regulations made under paragraph 2 of Schedule 1B or (b) no court has jurisdiction under the regulations and either party to the marriage is (i) domiciled in Scotland when the action is raised or (ii) dead and at death was domiciled in Scotland or had been habitually resident in Scotland for a year immediately preceding the death.
239. Under paragraph 6(2), the sheriff court has jurisdiction in these cases when either (a) or (b) above is met and either party to the marriage:
- was resident in the sheriffdom for a period of 40 days before the court action is raised; or
  - had been resident in the sheriffdom for at least 40 days ending not more than 40 days before the court action is raised and has no known residence in Scotland when the action is raised.

### **Supplementary provision**

- 240. Paragraph 7(1) of Schedule 1B makes it clear that the provisions in this Schedule on divorce or separation do not affect the Court of Session's jurisdiction to hear separation proceedings as a matter of necessity and urgency.
- 241. Paragraph 7(2) makes it clear that the provisions in Schedule 1B on divorce, separation and nullity do not affect the sheriff court's jurisdiction to hear such cases remitted to it under any enactment or rule of court, where hearing such cases does not contravene regulations made under paragraph 2.
- 242. Paragraph 7(3) makes it clear that when hearing a case under paragraphs 3 to 6 of Schedule 1B, the court can also hear other proceedings in respect of the same marriage, even if it would not normally have jurisdiction.

### **Presumption of Death (Scotland) Act 1977**

- 243. [Paragraph 2](#) of schedule 1 makes amendments to section 1 of the Presumption of Death (Scotland) Act 1977, which allows actions to be raised so that someone who is missing can be presumed to be dead. The amendment allows Edinburgh sheriff court to hear such actions in relation to a person in a same sex marriage where the marriage took place in Scotland and it appears to the court to be in the interests of justice to assume jurisdiction. This is referred to in paragraph 222 above as "jurisdiction of last resort".

### ***Schedule 2: Change of gender of married persons or civil partners***

#### **Part 1 – Applications by married persons and civil partners**

##### **Overview**

- 244. This schedule makes changes to the Gender Recognition Act 2004 ("the Gender Recognition Act").
- 245. The Gender Recognition Act enables people to change their legal gender by applying for a gender recognition certificate under section 1 of that Act. The Gender Recognition Act extends across the UK but relates largely to devolved matters. The Gender Recognition Panel ("the Panel") deals with applications for a gender recognition certificate and operates across the UK. Schedule 5 to the UK Marriage (Same Sex Couples) Act 2013 makes similar provision to this schedule in respect of people who married in England and Wales or overseas or entered into a civil partnership in England and Wales.
- 246. The issue of a full gender recognition certificate enables recipients to be recognised in law for all purposes in their new gender ("the acquired gender"). Under the Gender Recognition Act as enacted, people who are married or in a civil partnership must end their marriage or civil partnership before a full gender recognition certificate can be issued. This is achieved by the Panel issuing an interim gender recognition certificate to married applicants and applicants in civil partnerships. The issue of an interim gender recognition certificate is, in Scotland, a ground for divorce or dissolution of a civil partnership. Once a marriage or civil partnership has been ended the court can issue a full gender recognition certificate.
- 247. This schedule amends the Gender Recognition Act to enable a marriage solemnised in Scotland (a "protected Scottish marriage", defined by amendments made in paragraph 2 of the schedule) to continue where one or both parties change their gender and both parties wish to remain married. It also amends that Act to enable a civil partnership registered in Scotland ("protected Scottish civil partnership", defined by amendments made in paragraph 2) to continue where both parties change their gender simultaneously and wish to remain in their civil partnership.

**Paragraph 2 – interpretation**

248. **Paragraph 2** inserts definitions of the terms “protected Scottish civil partnership” and “protected Scottish marriage” into section 25 of the Gender Recognition Act (interpretation). Paragraph 2 also amends the existing definitions of “full gender recognition certificate” and “interim gender recognition certificate” to reflect that, in the future, gender recognition certificates may be issued under more provisions of the Gender Recognition Act.
249. **Paragraph 2(d)** makes provision in relation to civil partnerships and marriages carried out overseas by UK consular staff and through the UK armed forces. Such civil partnerships and marriages are to be treated as protected Scottish civil partnerships and marriages so long as the parties identified with Scotland at the time and details have been sent to the Registrar General for Scotland.

**Paragraph 3 – evidence**

250. **Paragraph 3** inserts new subsections (6D), (6E) and (6F) into section 3 of the Gender Recognition Act to amend the evidence requirements for an application to the Panel.
251. As enacted, section 3(6)(a) of that Act requires people who apply to the Panel for a gender recognition certificate to submit a statutory declaration as to whether they are married or in a civil partnership. Submission of this evidence enables the Panel to determine whether to issue a full gender recognition certificate (for people who are not married or in a civil partnership) or an interim certificate (for people who are married or in a civil partnership).
252. New subsection (6D) requires applicants who are party to a protected Scottish marriage to include in their statutory declaration an additional declaration that they wish the marriage to continue after the issue of a full gender recognition certificate (if that is the case). It also requires the application to include either a “statutory declaration of consent” by the applicant’s spouse (which is a declaration that the spouse consents to the marriage continuing after the issue of a full gender recognition certificate), or a statutory declaration by the applicant that no such declaration of consent by the applicant’s spouse is included.
253. If an application to the Panel contains a statutory declaration of consent by the applicant’s spouse, new subsection (6E) requires the Panel to inform the spouse that an application has been made.
254. New subsection (6F) provides that applicants in a protected Scottish civil partnership must provide a statutory declaration as to where the civil partnership was registered.

**Paragraph 4 – successful applications**

255. **Paragraph 4** amends section 4 of the Gender Recognition Act by inserting a new subsection (1A) and by amending and adding to subsections (2), (3), (3A) and (3B) (as substituted and inserted by paragraph 3 of Schedule 5 to the Marriage (Same Sex Couples) Act 2013). Section 4(2) to 4(3B) of the Gender Recognition Act makes provision on the issue of a gender recognition certificate following successful application. The type of certificate received, whether full or interim, depends on the marital or civil partnership status of the applicant and, in the case of a married applicant, whether the applicant’s spouse has consented to the marriage continuing following the issue of a full gender recognition certificate.
256. Section 4(2) to (3B) applies in relation to applicants who are either (i) a party to a marriage under the law of England and Wales or under the law of a country or territory outside the UK (“a protected marriage”) or (ii) a party to a civil partnership under the law of England and Wales (“a protected civil partnership”). The amendments made by paragraph 4 of schedule 2 to the Act make similar provision to that in section 4(2) to 4(3B) of the Gender Recognition Act but, aside from the provision about single

applicants, these amendments apply in relation to applicants who are a party to a protected Scottish marriage or a protected Scottish civil partnership.

257. The effect of these amendments is to enable a full certificate to be issued:
- to single applicants (new subsection (1A));
  - to applicants who are party to a protected Scottish marriage and both parties to the marriage consent to the marriage continuing (new subsection (3C)(a)); and
  - to applicants who are party to a protected Scottish civil partnership and the Panel has decided to issue the other party to the civil partnership with a full gender recognition certificate (new subsection (3C)(b)).
258. Interim gender recognition certificates will be issued:
- to applicants in protected Scottish marriages if either party to the marriage has not consented to the marriage continuing (new subsection (3D)(a));
  - subject to subsection (2)(b) (which makes provision about applicants in a protected marriage), to applicants not in a protected Scottish marriage (new subsection (3D)(b));
  - to applicants in protected Scottish civil partnerships where the other party to the civil partnership has not made an application for a gender recognition certificate at the same time as the applicant or the other party has made such an application but the Panel has decided not to issue a full gender recognition certificate to the other party (new subsections (3D)(c) and (3D)(d)); and
  - subject to subsection (2)(c) (which makes provision about applicants in a protected civil partnership), to applicants in a civil partnership which is not a protected Scottish civil partnership (new subsection (3D)(e)).
259. New subsection (3E) requires the Panel to notify an applicant's spouse where it issues a full gender recognition certificate to the applicant.
260. New subsection (3F) provides that section 4(3C)(b) of the Gender Recognition Act is subject to new section 5C (inserted into that Act by paragraph 7 of this schedule).

***Paragraph 5 – issue of full gender recognition certificate after interim certificate: applicant married***

261. **Paragraph 5** inserts new sections 4C, 4D, 4E and 4F into the Gender Recognition Act.
262. New section 4C provides for two situations (“Case A” and “Case B”) when the Panel must issue a full gender recognition certificate.
263. Case A is the situation where an applicant is in a protected Scottish marriage but the applicant's spouse has not issued a statutory declaration of consent. If the applicant's spouse changes his or her mind before the marriage is ended and wishes the marriage to continue, subsection (2) provides that the applicant can apply to the Panel for a full gender recognition certificate. The Panel can only issue a full gender recognition certificate to the applicant following such an application if it is satisfied that the following conditions are met:
- an interim gender recognition certificate has been issued to the applicant (subsection (2)(a));
  - the applicant was a party to a protected Scottish marriage at the time the interim gender recognition certificate was issued (subsection (2)(b));
  - the applicant is in a protected Scottish marriage (subsection (2)(c)); and



- both parties to the marriage now consent to the marriage continuing (subsection (2)(d)).
264. If these conditions are not met, the Panel will reject an application for a full gender recognition certificate (subsection (4)). Subsection (5) sets a time limit for an application under Case A. The time limit is six months from the date on which the interim certificate was issued.
265. Case B is the situation where an application is made by a civil partner in a protected Scottish civil partnership, an interim gender recognition certificate is issued and the couple subsequently decide to change their civil partnership into a marriage under section 3 of the 1977 Act, as amended by this Act. Subsection (3) provides that once the civil partnership has become a marriage, such applicants can apply for a full gender recognition certificate.
266. The Panel can only issue a full gender recognition certificate to the applicant if it is satisfied that the following conditions are met:
- an interim gender recognition certificate has been issued to the applicant (subsection (3)(a));
  - the applicant was a party to a civil partnership at the time the interim gender recognition certificate was issued (subsection (3)(b));
  - the notice of intention to marry must have been given within six months of the date of issue of the interim gender recognition certificate being issued (subsection 3(c));
  - the civil partnership must have become a marriage (subsection (3)(d));
  - the applicant is a party to that marriage (subsection (3)(e)); and
  - the applicant's spouse consents to the marriage continuing (subsection (3)(f)).
267. If these conditions are not met, the Panel will reject an application for a full gender recognition certificate (subsection (4)).
268. Subsection (6) sets a time limit for conversion of an interim certificate to a full certificate under Case B. The time limit is six months from the date when the civil partnership becomes a marriage.
269. Applications under Case A and Case B require the applicant's spouse to issue a statutory declaration of consent (subsection (7)). Applications under Case B must additionally include evidence of the date on which notice of intention to marry was given and evidence that the civil partnership has become a marriage (subsection (8)).
270. Where the Panel receives an application to issue a full gender recognition certificate in either Case A or Case B, subsection (9) requires it to notify the applicant's spouse both of the application and also of the issue of the full gender recognition certificate (if the Panel grants the application).
271. New section 4D provides for the situation where an applicant has made an application for a full gender recognition certificate under new section 4C but before that application can be determined the applicant's spouse dies.
272. Under section 5(2)(b) of the Gender Recognition Act as enacted, if the applicant's spouse dies within six months of the interim gender recognition certificate being issued, the applicant can apply for a full gender recognition certificate within six months of the date the death. This section may not be available to applicants who have applied under new section 4C if the application has not been determined within the time limit in new section 4C(5) and (6). New section 4D provides that in such cases the applicant can still rely on the existing section 5(2)(b) to apply for a full gender recognition certificate.

273. New section 4E makes provision so that a person who is in a protected Scottish marriage may apply under summary application to the sheriff for a full gender recognition certificate. An application may be made where the applicant has an interim gender recognition certificate issued by the Panel and the applicant's spouse has not given a statutory declaration of consent to the marriage continuing after the issue of a full gender recognition certificate.
274. Under subsection (2), the sheriff must grant the application if the sheriff is satisfied that the applicant was in a protected Scottish marriage when the interim gender recognition certificate was issued; the applicant is still in the marriage; and the application is made to the sheriff within 6 months of the interim gender recognition certificate being issued by the Panel.
275. Subsection (3) requires the sheriff to notify the applicant's spouse when an application is made and when the full gender recognition certificate is issued.
276. Subsection (4) requires the sheriff where a full gender recognition certificate has been issued to send a copy to the Gender Recognition Panel.
277. New section 4F makes provision to allow applications to be made to the Panel for a full gender recognition certificate in certain cases where the civil partner or spouse of a transgender person dies.
278. Section 4F covers two types of cases (cases A and B) where an interim gender recognition certificate has been issued to a person who is in a protected Scottish civil partnership; the civil partners then take steps to change their civil partnership to a marriage but this process is interrupted by the death of the non-transgender partner before a full gender recognition certificate has been issued.
279. Subsection (2) makes provision for 'Case A' where an interim gender recognition certificate has been issued to a person who was in a protected Scottish civil partnership; the civil partners submitted notice of intention to marry within the specified timescales and the non-transgender partner dies before the marriage has taken place.
280. Subsection (3) makes provision for 'Case B' where an interim gender recognition certificate has been issued to a person who was in a protected Scottish civil partnership; the civil partners have changed their civil partnership to a marriage but the non-transgender spouse dies before the transgender person could make an application to the Panel for a full gender recognition certificate under section 4C(3) of the 2004 Act. Where an application is made under section 4C(3) and the non-transgender spouse dies before the application is determined, section 4D of the 2004 Act, as explained in paragraphs 271 to 272, already allows an application to be made to the Panel for a full gender recognition certificate.
281. Applications under section 4F (under both cases A and B) can only be made if the civil partner or spouse died 6 months after the issue of the interim gender recognition certificate. This is because section 5 of the 2004 Act (in relation to spouses) and section 5A of the 2004 Act (in relation to civil partners) already allow applications to be made to the Panel for a full gender recognition certificate when the applicant's spouse or civil partner dies within 6 months of the issue of an interim gender recognition certificate.
282. In relation to case B, the Panel must be satisfied that the applicant's spouse died within six months of the civil partnership becoming a marriage.
283. Under section 4F(4), the applicant must still be single. Under section 4F(5), an application must be made within 6 months of the death of the spouse or the civil partner.
284. Under section 4F(6), an application must include evidence (i) of the death of the spouse or civil partner and of the date the death took place and (ii) of the date on which notice of intention to marry was submitted.



### **Applications by both civil partners**

285. [Paragraph 7](#) inserts new section 5C into the Gender Recognition Act. If both parties to a protected Scottish civil partnership make successful applications to the Panel, section 4(2)(c) of the Gender Recognition Act as amended by this Act applies, and both parties will be entitled to full gender recognition certificates. In such cases, the new section 5C enables the Panel to issue full gender recognition certificates to both parties simultaneously, ensuring that the continuity of the civil partnership is not affected by the changes in law to the gender of both parties.
286. [Paragraph 7](#) also inserts new section 5D into the Gender Recognition Act. This empowers the Scottish Ministers to make provision by order to set up other procedures to enable the Panel to issue full gender recognition certificates to applicants in a protected Scottish civil partnership. By virtue of amendments made by paragraph 19, any such orders are subject to the affirmative procedure.

### **Appeals etc.**

287. [Paragraph 8](#) makes consequential amendments to section 8 (appeals etc.) of the Gender Recognition Act to reflect the insertion of sections 4C, 4E and 4F of the Act by this Act.
288. [Paragraph 8](#) also inserts new subsection (5B) into section 8 of the Gender Recognition Act and makes a consequential amendment to section 8(6) of that Act. New subsection (5B) enables an applicant's spouse or civil partner to apply to the Court of Session where the spouse or civil partner considers that a full gender recognition certificate has been obtained fraudulently.

### **Registration**

289. [Paragraph 9\(1\)](#) amends section 10 of the Gender Recognition Act. New subsection (1B) provides that if the Panel or the sheriff issues a full gender recognition certificate to one or both parties in a protected Scottish marriage or protected Scottish civil partnership, the Panel must send a copy of the full gender recognition certificate(s) to the Registrar General for Scotland.
290. [Paragraph 9\(2\)](#) makes some consequential amendments to Part 2 of Schedule 3 to the Gender Recognition Act which concerns registration matters in Scotland. In addition, paragraph 9(2) inserts a new paragraph 20A into Schedule 3 to that Act. It provides the Registrar General with a power to make regulations, with the approval of the Scottish Ministers, about the registration of qualifying Scottish marriages and Scottish civil partnerships (defined as marriages and civil partnerships in Scotland where one or both parties (both parties in relation to civil partnerships) have been issued with full gender recognition certificates). Such regulations could make provision for the administrative issue of new marriage and civil partnership certificates.
291. In accordance with the amendments made by paragraph 19, any regulations under the new paragraph 20A of Schedule 3 to the Gender Recognition Act would be subject to negative procedure.

### **Continuity of marriage**

292. [Paragraph 10](#) inserts a new section 11C into the Gender Recognition Act. Section 11C provides that the continuity of a protected Scottish marriage is not affected by the issuing of a full gender recognition certificate to one or both of the parties to the marriage.

### **Continuity of civil partnership**

293. [Paragraph 11](#) inserts a new section 11D into the Gender Recognition Act. Section 11D provides that the continuity of a protected Scottish civil partnership is not affected

by the issuing of full gender recognition certificates to both of the parties to the civil partnership under section 4(3C)(b) of that Act.

### **Foreign gender change and marriage**

294. [Paragraph 12](#) repeals section 21(2) to (5) of the Gender Recognition Act (foreign gender change and marriage).
295. Section 21(2) to (5) of that Act currently provides for the situation where a person claims to have changed gender in their country of origin and married a person of the opposite sex to their acquired gender in that country or another country outside the UK. At present, these marriages have no standing under Scots law until a full gender recognition certificate has been issued by the Panel because Scots law regards the parties as having not been respectively male and female when the marriage was solemnised. As marriages in Scotland will now be available to same sex couples these sections can be repealed for the purposes of Scots law.

### **Part 2 – Alternative grounds for granting applications for gender recognition certificates**

296. [Part 2](#) of schedule 2 makes additional changes to the Gender Recognition Act. When the Gender Recognition Act came into force on 4 April 2005, section 27 included a modified evidence process which was open to applicants who could produce evidence that they had been living in their acquired gender for six years prior to the date on which they made their application under section 27. The so-called “fast track” process ran for the first two years after commencement of the Gender Recognition Act and expired on 3 April 2007. Part 2 of schedule 2 inserts a new modified evidence process into the Gender Recognition Act. The modified evidence process set out in new section 3D of the Gender Recognition Act will only be available to applicants who meet the four conditions set out in new section 3C of the Act.
297. [Paragraph 14](#) inserts new subsection (3B) into section 2 of the Gender Recognition Act. New subsection (3B) provides that section 2 of the Gender Recognition Act (determination of applications) does not apply to any application under section 1(1)(a) of the Gender Recognition Act where the applicant indicates that the application is for a gender recognition certificate to be granted in accordance with new section 3C of the Gender Recognition Act.
298. [Paragraph 15](#) inserts new section 3C into the Gender Recognition Act. New section 3C(2) provides that, if the Panel is satisfied that the applicant meets the four conditions set out in new sections 3C(3) to (6) and has complied with the evidence requirements set out in new section 3D, it must grant the application. If the Panel is not required by section 3C(2) to grant an application, it must reject the application in accordance with new section 3C(9).
299. New section 3C(3) to (6) set out the four conditions applicants must meet to be eligible to rely on the modified evidence process:
- the first condition is that the applicant was a party to a protected Scottish marriage or a protected Scottish civil partnership on or before the date the application for gender recognition is made.
  - the second condition is that the applicant: was living in the acquired gender for six years prior to the date of commencement of section 29 of this Act; has continued to live in the acquired gender until the date the application was made; and intends to continue living in the acquired gender until death.
  - the third condition is that the applicant has or has had gender dysphoria or has undergone surgery or other treatment for the purpose of modifying sexual characteristics as may be laid down by order by the Scottish Ministers.

- the fourth condition is that the applicant is ordinarily resident in Scotland.
300. [Paragraph 16](#) inserts new subsection (10) into section 3 of the Gender Recognition Act which disapplies the evidence requirements set out in section 3 in respect of applications where the applicant indicates that the application for a gender recognition certificate to be issued is being made in accordance with new section 3C of the Gender Recognition Act.
301. [Paragraph 17](#) inserts new section 3D into the Gender Recognition Act. New section 3D sets out the modified evidence process an applicant who meets the four conditions in new section 3C of the Gender Recognition Act is entitled to rely on.
302. New section 3D(2) to (4) set out medical evidence applicants are required to submit. If the applicant is applying on the basis of having or having had gender dysphoria, a report made by a registered medical practitioner specialising in the field of gender dysphoria or a registered psychologist practising in the field of gender dysphoria must include details of the diagnosis of gender dysphoria. If the applicant is applying on the basis of having undergone treatment for the purpose of modifying sexual characteristics, or if the applicant is currently undergoing such treatment or such treatment has been planned or prescribed for the applicant, a report made by a registered medical practitioner or registered psychologist practising in the field of gender dysphoria must include details of the treatment.
303. New section 3D(5) to (8) set out the additional evidence applicants are required to submit. New section 3D(5) requires applicants to include a statutory declaration that they meet the conditions in new section 3C(3) and (4) of the Gender Recognition Act. New section 3D(6) requires applicants to include a statutory declaration as to whether they are married or in a civil partnership. The Scottish Ministers can by order specify other information or evidence which applicants may be required to provide under section 3D(6) and the Panel may require applicants to submit any additional evidence it requires to determine the application provided it gives reasons for such requests (new section 3D(10)). Applicants can also submit any additional evidence they wish to include in their application.
304. If an applicant is married, new section 3D(7) requires the applicant to include in the application a statutory declaration as to whether the marriage is a protected Scottish marriage. If it is, new section 3D(8) requires an application to contain a statutory declaration of consent (within the meaning of new section 3(6D)(b)(i) of the Gender Recognition Act, which is “a declaration by the applicant’s spouse that the spouse consents to the marriage continuing after the issue of a full gender recognition certificate”) or a statutory declaration by the applicant that no such declaration by the applicant’s spouse is included. If the application contains a statutory declaration of consent by the applicant’s spouse, new section 3D(9) requires the Panel to inform the spouse that an application has been made.
305. [Paragraph 18](#) amends Schedule 1 to the Gender Recognition Act to insert new sub-paragraph (4) into paragraph 4. New paragraph 4(4) provides that the Panel need not include a medical member when determining any application under section 1(1)(a) of the Gender Recognition Act where the application is for a gender recognition certificate to be granted in accordance with new section 3C of that Act.

### **Part 3: Consequential amendments**

306. [Paragraph 19](#) makes consequential amendment to the Gender Recognition Act reflecting the substantive amendments made in the other paragraphs of schedule 2 to the Act.