

Draft Order laid before the Scottish Parliament under section 9(2)(d) of the Marriage and Civil Partnership (Scotland) Act 2014, for approval by resolution of the Scottish Parliament. This draft Order replaces the one laid on 31st August 2015 and is being issued free of charge to all known recipients of that draft Order.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

MARRIAGE

CIVIL PARTNERSHIP

**The Qualifying Civil Partnership Modification (Scotland) Order
2015**

Made - - - - 2015
Coming into force - -

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 9(1) and (2) and 11(5) and (6) of the Marriage and Civil Partnership (Scotland) Act 2014^(a) and all other powers enabling them to do so.

In accordance with section 9(3) of that Act they have consulted the Registrar General of Births, Deaths and Marriages for Scotland and such other persons as they considered appropriate on a copy of the proposed draft Order.

In accordance with section 9(2)(d) of that Act, a draft of this Order has been laid before, and approved by resolution of, the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Qualifying Civil Partnership Modification (Scotland) Order 2015 and comes into force on the day after the day on which it is made.

Interpretation

2. In this Order—

“the 2014 Act” means the Marriage and Civil Partnership (Scotland) Act 2014.

^(a) 2014 asp 5. The powers to make this Order are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Order is subject to the affirmative procedure by virtue of section 33(3) of that Act.

Meaning of qualifying civil partnership

3.—(1) Section 5 (objections to marriage) of the 1977 Act^(a) is modified as follows.

(2) For subsection (6) substitute—

“(6) For the purposes of subsection (4)(b) a “qualifying civil partnership” is—

(a) a civil partnership which—

(i) was registered in—

(A) Scotland, or

(B) England and Wales or Northern Ireland; and

(ii) has not been dissolved, annulled or ended by death; or

(b) a civil partnership which is treated under Chapter 2 of Part 5 of the Civil Partnership Act 2004^(b) as having formed by virtue of an overseas relationship being registered and has not been dissolved, annulled or ended by death.”.

(3) In subsection 5(7), for “subsection (6)(a)” substitute “subsection (6)(a)(i)(A)”.

(4) After subsection (7) insert—

“(8) A civil partnership which was registered outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 of the Civil Partnership Act 2004 is to be treated for the purposes of subsection (6)(a)(i)(B) as having been registered in England and Wales or, as the case may be, Northern Ireland if—

(a) the parties to the civil partnership elected England and Wales or, as the case may be, Northern Ireland as the relevant part of the United Kingdom under the Order; and

(b) details of the civil partnership have been sent to the Registrar General for England and Wales or, as the case may be, the Registrar General in Northern Ireland.”.

Process for notice of intention to marry

4.—(1) Section 3 (notice of intention to marry) of the 1977 Act^(c) is modified as follows—

(2) In subsection (1)(bb), for “section 5(6)” substitute “section 5(6)(a)(i)(A)”;

(3) After subsection (1)(bb) add—

“(bc) if the person is in a qualifying civil partnership within the meaning of section 5(6)(a)(i)(B) or (b) with the other party to the intended marriage—

(i) information equivalent to an extract from an entry in the civil partnership register; and

(ii) such documentary evidence in support of that information, as the district registrar may require;”.

(4) In subsection (2) for “or (bb)” substitute “, (bb) or (bc)”.

(5) In subsection (5)—

(a) after paragraph (ii)(b) of the proviso omit “or”;

(b) after paragraph (ii)(c) of the proviso insert:—

“; or

(a) Section 5 has been amended by section 8(3) of the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5) (“the 2014 Act”).

(b) 2004 c.33.

(c) Section 3 has been amended by section 8(2) of the 2014 Act.

- (d) if no such certificate has been issued only by reason of the fact that the law of the state in which the party is domiciled prevents the parties to a qualifying civil partnership within the meaning of section 5(6) from marrying.”.

Procedure for change of qualifying civil partnership into marriage

5. In section 10(7) of the 2014 Act (change of qualifying civil partnership into marriage) for “section 5(6) of the 1977 Act (inserted by section 8(3)(b) of this Act)” substitute “section 5(6)(a)(i)(A) of the 1977 Act”.

Effect of marriage between civil partners in a qualifying civil partnership

6.—(1) Where civil partners who marry in accordance with the 1977 Act are in a qualifying civil partnership within the meaning of section 5(6)(b) of that Act, section 11(2)(b) of the 2014 Act has effect subject to paragraph (2).

(2) If the qualifying civil partnership was registered (under the relevant law) as having been entered into before 5th December 2005, the civil partners are to be treated as having been married to each other since 5th December 2005.

(3) In paragraph (2) “the relevant law” means the law of the country or territory where the relationship is registered (including its rules of private international law).

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the meaning of qualifying civil partnership in section 5(6) of the Marriage (Scotland) Act 1977 so as to include civil partnerships registered outside Scotland and makes amendments to the 1977 Act and the Marriage and Civil Partnership (Scotland) Act 2014 related to that modification. The effect of the Order is that parties to a civil partnership registered outside Scotland could, in the future, change their relationship into a marriage in Scotland.

The Order also provides that if an overseas relationship was registered as having been entered into before the date on which such relationships were recognised in Scotland (5th December 2005) then the couple will be treated for the purposes of section 11(2)(b) of the 2014 Act as having been married to each other since 5th December 2005 rather than the date on which the overseas relationship was registered.

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